1-65
Mr Justice Davis
Submitted
13 Dec.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 440.

DANIEL WEBSTER, PLAINTIFF IN ERROR,

vs.

CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY OF THE GREAT WESTERN INSURANCE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 10, 1874.

A. Story

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3 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, circuit judge of said court, on Thursday, the twenty-eighth day of May, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-eighth year.

WILLIAM H. BRADLEY, *Clerk.*

DANIEL WEBSTER
vs.
CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of the Great Western Insurance Company. } 11590. Error from district court.

4 NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that, on the twenty-seventh day of April, A. D. eighteen hundred and seventy-four, Daniel Webster, plaintiff in error, by his attorneys, filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, a transcript of a record from the district court of the United States for said northern district of Illinois, in the cause therein wherein said Daniel Webster is plaintiff in error, and Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, is defendant in error; which said transcript is in the words and figures following, to wit:

5 *Transcript from district court.*

Pleas in the district court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. James C. Hopkins, judge, and on Tuesday, December the 9th, A. D. (1873) one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-eighth year.

WM. H. BRADLEY, *Clerk.*

CLARK W. UPTON, ASSIGNEE OF THE GREAT Western Insurance Company, a bankrupt,
v.
DANIEL WEBSTER. } Assumpsit.

Be it remembered that, on the eighteenth day of June, one thousand eighteen hundred and seventy-three, the said plaintiff, by Boutell and Waterman, his attorneys, filed in the office of the clerk of the district court of the United States for the northern district of Illinois a precipe, bond for costs, and declaration; which reads in the words and figures following, to wit:

Precipe.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

District court of the United States for the northern district of Illinois, July term, A. D. 1873.

CLARK W. UPTON, ASSIGNEE OF THE GREAT Western Insurance Company, a bankrupt, plaintiff,
v.
DANIEL WEBSTER, DEFENDANT. } Assumpsit. Damages $10,000.

The clerk of said court will issue summons in the above-entitled

cause to said defendant in a plea of trespass on the case on promises, to the damage of said plaintiff in the sum of ten thousand dollars, direct the same to the U. S. marshal of the northern district of Illinois
6 to execute, and make it returnable to the July term of said court, A. D. 1873.

BOUTELL & WATERMAN,
Plaintiff's Attorneys.

To WILLIAM H. BRADLEY, Esq.,
Clerk of said Court.

CHICAGO, *June 18th*, 1873.

(Indorsed:) Filed this 18th day of June, 1873. Wm. H. Bradley, clerk.

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

District court, July term, A. D. 1873.

CLARK W. UPTON, ASSIGNEE G'T WESTERN Ins. Co., a bankrupt, *v.* DANIEL WEBSTER. } In assumpsit.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and, in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, we hereby agree and stipulate that execution may issue against us and each of our property for any costs taxed against him.

Dated this eighteenth day of June, A. D. 1873.

BOUTELL & WATERMAN.

(Indorsed:) Filed June 18, 1873. Wm. H. Bradley, clerk.

Declaration.

District court of the United States for the northern district of Illinois, of the July term in the year A. D. 1873, sitting in bankruptcy.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Clark W. Upton, who is assignee of the Great Western Insurance
7 Company, a corporation heretofore created and existing under the laws of the State of Illinois, and having its principal office in the city of Chicago, within said northern district of Illinois, which said corporation has been heretofore, by the order and judgment of this honorable court, adjudged a bankrupt, in accordance with the provisions of an act of Congress of the United States entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and the amendments thereto, by Boutell and Waterman, his attorneys, complains of Daniel Webster, defendant in this action, and who has been duly summoned, etc., on a plea of trespass on the case on promises.

For that whereas the said bankrupt, the Great Western Insurance Company, being a corporation created and existing under and in pursuance of an act of the legislature of the State of Illinois entitled "An act to incorporate the Great Western Insurance Company of Chicago, Illinois," approved February 4th, A. D. 1857, for the purpose of insurance and the taking of risks on all kinds of property, both marine and fire, and deriving profits from the said business of insurance to its stockholders; having a capital stock designated by the express terms of the said act of incorporation, and allowed as the sum of five hundred thousand dollars.

And whereas afterwards, to wit, on the 25th day of June, A. D. 1870, under and in pursuance of the provisions of the laws of the State of Illinois, the charter of the said company was, by the stockholders and directors thereof, amended so that its capital stock might be increased to five millions of dollars.

That said capital stock was divided into shares of one hundred dollars each, the subscription and payment for which stock constituted its only fund and means of paying the losses it might meet in the prosecution of its business. Five per cent. of its subscribed capital stock was required to be paid, as a company fund, in cash, and the balance to be secured to be paid on demand, or otherwise, by approved judgment notes, by hypothecated stock-mortgages on real estate in Cook County, or other satisfactory security. That by its charter said corporation was empowered to do any and all acts consistent with the constitution and laws of the State of Illinois.

8 That by the laws of the State of Illinois in such case made, it was provided that the corporators of any insurance company organized in the State of Illinois should severally be liable for all debts and responsibilities of such company, to the amount of stock by him or them subscribed, until the whole amount of the capital stock of such company shall have been fully paid in, and a certificate thereof recorded.

And whereas the said defendant heretofore, to wit, on the, to wit, 8th day of October, A. D. 1871, at Chicago, in the northern district of Illinois, subscribed for and took, to wit, one hundred shares of the capital stock of the said Great Western Insurance Company, and thereby became the owner and holder thereof, and then and there agreed and became bound and obligated thereby to pay the said Great Western Insurance Company twenty dollars per share of one hundred dollars each, in installments, to wit, twenty-five per cent. (of the said twenty dollars) on recept of the stock certificate, twenty-five per cent. in three months, twenty-five per cent. in six months, and twenty-five per cent. in nine months from the date thereof; the balance, eighty per cent., to stand and remain on subscription without interest; which said original subscription, so executed, has been accident'ly destroyed by fire.

And whereas, to wit, on the, to wit, 8th day of October, A. D. 1871, the said Great Western Insurance Company did, in accordance with the terms and conditions of the subscription aforesaid, make, execute, and deliver to the said defendant a certificate of, to wit, one hundred shares of its capital stock so subscribed for and agreed to be taken by said defendant as aforesaid, which said certificate was taken and accepted by the said defendant, whereby the said defendant became and was a stockholder in said company to the extent of, to wit, one hundred shares of its capital stock apportioned and set apart to and vested in him as aforesaid, whereby the said defendant became and ever since has continued to be a stockholder in said Great Western Insurance Company, exercising

all the rights, powers and privileges of a stockholder therein, by means whereof and by force of the statute in such case made and pro-
9 vided, the said defendant became liable to pay to said Great Western Insurance Company the sum of one hundred dollars upon each share of the capital stock of the said Great Western Insurance Company so taken, held, and owned by him as aforesaid.

And whereas afterwards, to wit, on the 3d day of January, A. D. 1872, to wit, at Chicago, in the northern district of Illinois, in consequence of great losses which said insurance company had prior to that time sustained by fire in said city of Chicago aforesaid, and elsewhere, whereby its entire cash capital and assets were exhausted, by reason of its liabilty to its policy-holders, and to an amount greatly exceeding all its cash funds and means of payment, and in an amount largely in excess of all sums that can be collected on its entire unpaid capital stock and assets, which said liabilities are still outsanding, due, and unpaid, and for the purpose of providing means of payment thereof to said insurance company by a vote of its directors and stockholders duly convened for that purpose, to wit, on the day and year aforesaid, to wit, at Chicago, in the northern district of Illinois aforesaid, duly assessed, called in, and ordered paid, to wit, twenty per cent. of the then remaining unpaid eighty per cent. on each share of stock, to wit, twenty dollars on each share thereof so held by its stockholders on said unpaid capital stock, of which the said stockholders then and there had notice that only a small amount, to wit, twenty per cent., had been paid on the stock subscribed for and held by the said defendant, as aforesaid, and which said sum so assessed, called in, and ordered paid is still due and owing from said defendant.

And whereas afterwards, in consequence of its losses so sustained as aforesaid, and the delinquencies of its stockholders in the payment of the calls so made upon them as aforesaid, the said Great Western Insurance Company became unable to meet its liabilities, and upon a petion filed in bankruptcy on, to wit, the 17th day of January, by Richard M. Hooley, against the said Great Western Insurance Company, the said insurance company was afterwards, to wit, on the sixth day of February, A. D. 1872, adjudicated a bankrupt by the district court of the
10 United States for the northern district of Illinois, in pursuance of the act of Congress of the United States in such case made and provided, as by the records thereof now remaining in said court will more fully and at large appear.

And whereas afterwards, to wit, on the eleventh day of April, A. D. 1872, the said Clark W. Upton was duly appointed assignee in bankruptcy of the estate of the said Great Western Insurance Company, in conformity with law, and a deed of assignment of all the estate, effects, and property of the said Great Western Insurance Company, a bankrupt as aforesaid, was executed in due form of law, under the hand and seal of Homer N. Hibbard, esq., register in bankruptcy for the first congressional district of the State of Illinois, and delivered to the said Clark W. Upton so appointed assignee as aforesaid, thereby vesting in the said assignee the estate, property, and effects of the said bankrupt.

And whereas this honorable court, sitting in bankruptcy in and for the northern district of Illinois, on the application and petition of the said Clark W. Upton, assignee of the estate of said bankrupt as aforesaid, to wit, on the 5th day of July, A. D. 1872, made and entered of record, in this honorable court, a call upon the stockholders of the said bankrupt for the full payment of the entire unpaid capital stock of the said bankrupt, severally held by them and each of them, and ordered the same paid

hereinafter as set forth, which said call and order of payment was of the following tenor and effect, to wit:

IN THE MATTER OF THE GREAT WESTERN INSURANCE Company, bankrupt. } In bankruptcy.

And now, on this day comes C. W. Upton, assignee of the estate of said bankrupt, and makes application to this court, showing that a large amount of the capital stock of the said bankrupt remains upaid in part; that the whole amount of such capital stock will be required to be paid in order to meet the demands now due from and proven against the estate of said bankrupt, and upon investigation of the facts in the matter, and the court being fully advised in the premises, it is ordered that the entire amount unpaid on the capital stock of the said bank-
11 rupt be paid to said assignee on or before the 15th day of August, A. D. 1872, at his office in Chicago, Illinois, and in default thereof that said assignee proceed to collect the same. It is further ordered that notice of this call be given to the stockholders of said bankrupt, so far as known, without unreasonable delay, by publication or otherwise.

And the plaintiff, assignee as aforesaid, avers that notice in accordance with the terms and conditions of said order of this honorable court was duly given to the stockholders of said bankrupt, as therein and thereby required.

That a small amount, to wit, twenty per cent. only, has been paid upon each of the said shares of stock in the bankrupt company, which are now held and owned by the said defendant. And whereas the said company did publish and advertise the entire amount unpaid upon its capital stock issued, including the amount unpaid upon the stock by the defendant held as aforesaid, as a part of its resources wherewith to pay losses and protect its creditors, and did procure the insurance, the losses upon which are now due and unpaid, and for the indebtedness upon which losses render it now insolvent, upon such publication and advertisement, and by reason of the facts aforesaid, the said defendant is now indebted thereon to the plaintiff, as assignee as aforesaid, for the remaining unpaid portion, to wit, eighty per cent. thereof, to wit, for the sum of, to wit, eight thousand dollars.

And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, August 15, 1872, at Chicago aforesaid, undertook and promised the plaintiff, as assignee as aforesaid, to pay him said last-named sum of money on request.

Yet the said defendant, although often requested, has not paid the said several sums of money, or either or any part thereof, but has wholly neglected and refused so to do.

And whereas, also, the said defendant heretofore, to wit, on the, to wit, 8th day of October, A. D. 1871, to wit, at Chicago, in the northern district of Illinois, being the holder and owner of, to wit, one hundred other shares of one hundred dollars each of the capital stock of the Great Western Insurance Company aforesaid, upon which had been paid
12 a small sum, to wit, twenty per cent. thereof, or twenty dollars on each share thereof, the residue and balance due thereon, to wit, being eighty per cent. thereof, to wit, eighty dollars on each share thereof, being subject to assessment on call of the said company, its board of directors, agents, or creditors, whenever thereafterwards the same should be required to pay the debts or liabilities of the said Great Western Insurance Company in the due course of its business as an insurer against fire or marine losses or both.

And whereas the said Great Western Insurance Company, in consequence of losses sustained by its policy-holders, for which it became and was liable to pay and indemnify against, to an amount greatly exceeding all its assets, and more than can be collected upon all of its said assets and unpaid capital stock, and which said liabilities are now subsisting and wholly unpaid, all of which the defendant had notice, and in consequence of the non-payment thereof the said Great Western Insurance Company has been by the judgment and order of the district court of the United States for the northern district of Illinois sitting in bankruptcy, on petition duly filed in said court for that purpose by its creditors, duly adjudged a bankrupt in pursuance of the laws of the United States in that behalf enacted and provided, of which defendant had notice.

And whereas upon such adjudication the said Clark W. Upton was appointed the assignee of the estate of the said bankrupt, under and in pursuance of the bankrupt laws of the United States in that behalf enacted, and as such assignee now holds the estate of said bankrupt in pursuance of said bankrupt law as aforesaid.

And whereas the said United States district court, sitting in bankruptcy, on petition duly filed for that purpose, did order and adjudge among other things, that the whole amount of the unpaid capital stock of said insurance company, bankrupt, will be required to be paid in order to meet its liabilities and demands proven in bankruptcy against said bankrupt, and did further order that the entire amount unpaid on the capital stock of the said bankrupt insurance company be paid by its stockholders to the said plaintiff, as assignee as aforesaid, on or
13 before the 15th day of August, A. D. 1872, at his office in Chicago, Illinois, of which said defendant then and there had notice, as by the records and proceedings of the said court will more fully and at large appear, which said time has long since elapsed.

By means whereof, and by force of the statutes in such case made and provided, the said defendant became and is liable to pay to said plaintiff a large sum of money, to wit, eighty per cent. or eighty dollars on each share of stock so held and owned by him as aforesaid, to wit, eight thousand dollars, and being so liable, the said defendant in consideration thereof, afterwards, to wit, on the 15th day of August, A. D. 1872, at Chicago aforesaid, undertook and promised the plaintiff, as assignee as aforesaid, to pay him said last-named sum of money on request, and which, though often requested, said defendant wholly neglects and refuses to pay, or any part thereof.

And whereas, also, the said defendant heretofore, to wit, on the 8th day of October, A. D. 1871, at Chicago, in the northern district of Illinois aforesaid, became and was indebted to the Great Western Insurance Company, which said insurance company has been duly adjudged a bankrupt in pursuance of law, for, to wit, one hundred shares of the capital stock of said company of one hundred dollars each, before that time bargained, sold, set apart, and transferred to him, said defendant, by the said insurance company, on the books of said company, at his, said defendant's, special instance and request, the certificates whereof were delivered to said defendant, and being so indebted to the said defendant in consideration thereof, afterwards, to wit, on the day and year last aforesaid, to wit, at Chicago aforesaid, undertook, and then and there faithfully promised the said plaintiff, as the assignee in bankruptcy of the estate of the said Great Western Insurance Company, bankrupt as aforesaid, duly appointed according to law, to pay him

therefor when he, the said defendant, should be thereunto afterwards requested.

And also for that whereas, heretofore, to wit, at Chicago, in the northern district of Illinois, on, to wit, the eleventh day of April, A. D. 1872, the said defendant, at his special instance and request, became and was the legal owner of certain, to wit, one hundred other shares of the
14 stock of the said Great Western Insurance Company, of the par value of one hundred dollars each, upon which said stock there was unpaid and uncalled for at the said time, when the said defendant became the said legal owner thereof, to wit, the sum of eighty dollars per share, the payment of which said sum of eighty dollars per share always therefore had been, and at the time the said defendant became the legal owner thereof as aforesaid, was unsecured to said company, save by the obligation of whoever might be the legal owner thereof to pay the same, and which said sum of eighty dollars per share he, the said defendant, upon becoming the legal owner of said stock, in consideration of the rights and privileges thereby by him, said defendant, acquired, promised and agreed to and with said company, that he, the said defendant, would pay to said company upon each and every of said shares so by him owned as aforesaid, whenever he the said defendant should be legally and properly called upon so to do.

And the plaintiff saith that said defendant hath often been legally and properly called upon to pay the said sum of eighty dollars per share upon each of said, to wit, one hundred shares so by him owned as aforesaid, to wit, the sum of, to wit, eight thousand dollars, and that he, said defendant, was at the time of so being called upon to pay said sum, the legal owner of, to wit, said one hundred shares of said stock. Nevertheless he, the said defendant, hath not paid the same or any part thereof to said company or to this plaintiff, whereby an action hath accrued to this plaintiff, as assignee in bankruptcy, to have and demand of the said defendant the said sum of, to wit, ten thousand dollars.

Whereas, also, the said defendant afterwards, to wit, on the day and year last aforesaid, at Chicago, in the northern district of Illinois aforesaid, was indebted to the said plaintiff, assignee as aforesaid, in the further sum of, to wit, ten thousand dollars, like lawful money, for, to wit, one hundred shares of the capital stock of the Great Western Insurance Company, theretofore issued and delivered to him the said defendant, of the par value of one hundred dollars per share by the Great Western Insurance Company, at his the said defendant's special instance and request, and which said shares of said capital stock were severally,
15 at the commencement of this suit, owned and held by him, the said defendant, and being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Chicago aforesaid, undertook, and then and there faithfully promised, to pay said last-mentioned sum of money when he the said defendant should be thereunto afterwards requested; yet though often requested, said defendant wholly neglects and refuses to pay therefor or for any part thereof.

And whereas also afterwards, to wit, on the day and year last aforesaid, to wit, at Chicago aforesaid, in consideration that the Great Western Insurance Company, a corporation theretofore created and existing under and in pursuance of the laws of the State of Illinois, at the like special instance and request of the said defendant, had before that time issued in due form of law, and delivered to him, the said defendant, to wit, one hundred shares of its capital stock, of the par value of one hundred dollars for each and every share so issued and delivered to said de-

fendant, he, the said defendant, undertook, and then and there faithfully promised the said Great Western Insurance Company, and the said plaintiff, as its assignee legally appointed, to pay for the said shares so issued to and held by him, the said defendant as aforesaid, the sum of one hundred dollars for each and every share of the said capital stock so issued and delivered to him, the said defendant as aforesaid, when he should be thereunto afterwards requested; yet, though often requested, said defendant has not paid the said sum of money, or any part thereof, to the said Great Western Insurance Company, or to the plaintiff, its assignee as aforesaid, but wholly neglects and refuses so to do.

And whereas also the said defendant heretofore, to wit, on the eleventh day of April, A. D. 1872, at Chicago, in the northern district of Illinois, was indebted to the Great Western Insurance Company, a corporation theretofore created, and existing under and in pursuance of the laws of the State of Illinois, and to the plaintiff at the commencement of this suit, as assignee thereof, for that purpose duly appointed, for divers stocks, goods, and chattels, to wit, one hundred shares of the capital stock of the Great Western Insurance Company, of the
16 par value of one hundred dollars for each and every share before that time subscribed for, issued to, and held by the said defendant, at his special instance and request, whereby the said defendant became and was a stockholder in the said Great Western Insurance Company, the rights and privileges whereof the said defendant used and enjoyed, with the gains and profits thereunto pertaining; and, being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the said city of Chicago aforesaid, undertook, and then and there faithfully promised the said plaintiff's assignee, as aforesaid, to pay him for the said goods, chattels, and stock at the rate of one hundred dollars per share thereof, when he, the said defendant, should be thereunto afterwards requested.

Yet, though often requested, the said defendant wholly neglects and refuses to pay either of the sums of money in the several counts of this declaration mentioned, or any part thereof, to the said plaintiff, assignee as aforesaid, to the plaintiff's damage, as assignee as aforesaid, as he says, in the sum of, to wit, ten thousand dollars; and therefore he brings suit.

By BOUTELL & WATERMAN,
His Attorneys.

The original subscription papers mentioned in first counts having been destroyed by fire, a copy thereof is not given.

(Indorsed:) Filed June 18, 1873. Wm. H. Bradley, clerk.

And thereupon a summons issued out of said clerk's office, which, together with the marshal's return thereon indorsed, reads in the words and figures following, to wit:

Summons.

District court United States of America, northern district of Illinois.

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Daniel Webster, if found in your
17 district, to be and appear before our judge of our district court of the United States for the northern district of Illinois, on the

first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of July next, to answer unto Clark W. Upton, assignee of the Great Western Insurance Company, a bankrupt, of a plea of trespass on the case upon promises, to his damage, as he alleges, of ten thousand dollars, and have you then and there this writ.

Witness the Hon. Henry W. Blodgett, judge of the district court of the United States of America, at Chicago aforesaid, this 18th day of June, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the 97th year.

[SEAL.] W. H. BRADLEY, *Clerk.*

Marshal's return.

I served the within summons by reading the same to and in the presence and hearing of Daniel Webster, therein named, on the 26th day of June, 1873.

B. H. CAMPBELL,
U. S. Marshal,
By S. H. TOURTELOTTE,
Deputy.

(Indorsed:) Filed July 7th, 1873. W. H. Bradley, clerk.

And afterwards, to wit, on the fifth day of July, A. D. 1873, the defendant, by E. and A. Van Buren, his attorneys, comes and files the following plea in said cause, to wit:

Plea.

In the United States district court.

DANIEL WEBSTER
ats.
CLARK W. UPTON, ASSIGNEE OF GREAT WESTERN INSURANCE CO. } Asst.

And the defendant, by E. and A. Van Buren, his attorneys, comes and defends the wrong and injury when, etc., and says that he did not undertake and promise in manner and form as the plaintiff has
18 above thereof complained against him, and of this he puts himself upon the country, etc.

E. AND A. VAN BUREN,
Deft's Attys.

STATE OF ILLINOIS,
Cook County, ss:

Daniel Webster, being first duly sworn, says that above plea and the facts therein stated are true.

DANIEL WEBSTER.

Subscribed and sworn to before me this 3d day of July, A. D. 1873.

[SEAL.] A. VAN BUREN,
Notary Public, Cook County, Ill.

(Indorsed:) Filed July 5, 1873. Wm. H. Bradley, clerk.

And afterwards, to wit, on the 8th day of December, A. D. 1873, of the October term of said court, the following proceedings were had and entered of record, to wit:

CLARK W. UPTON, ASSIGNEE OF THE GREAT Western Insurance Company, a bankrupt,
v.
DANIEL WEBSTER.
} Assumpsit.

Now come the parties, by their attorneys, and this cause now coming on to be heard, thereupon come a jury of good and lawful men, to wit: W. J. Heath, N. Shaul, S. W. McMaster, S. Ramsey, Robert Vose, R. V. Kennedy, H. A. Foster, H. Bush, A. A. Morse, N. Mitchell, E. Stretch, and R. B. Hill, who were all duly elected, tried, and sworn well and truly to try said issue, and after hearing the evidence and arguments of counsel, and receiving the instructions from the court, the jury retired to consider of their verdict, with leave by the court, by agreement of the parties, that when the jury shall have agreed upon a verdict they may sign and seal the same, deliver it to the clerk, and disperse.

And afterwards, to wit, on the 9th day of December, A. D. 1873, the further following proceedings were had in said cause and entered of record, to wit:

19 CLARK W. UPTON, ASSIGNEE OF THE Great Western Insurance Company, a bankrupt,
v.
DANIEL WEBSTER.
} Assumpsit.

Now come again the parties, by their attorneys, and now come also the jury heretofore empaneled and sworn in this behalf, and return into court their sealed verdict, wherein they say: We, the jury, find the issue for the plaintiff, and assess his damages at the sum of eight thousand six hundred and thirty dollars and seventy-three cents. And thereupon the defendant, by his attorneys, moves the court for a new trial herein, which said motion is overruled by the court.

It is thereupon considered and adjudged by the court, that the plaintiff do have and recover of and from the defendant the said sum of eight thousand six hundred and thirty dollars and seventy-three cents, the damages so as aforesaid found and assessed, together with his costs and charges in this behalf expended, amounting to the sum of dollars cents, and that execution issue therefor.

And afterwards, to wit, on the 9th day of December, A. D. 1873, the following bill of exceptions was filed in said court in said cause, to wit:

Exceptions.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

District court of the United States in and for said district.

CLARK W. UPTON, ASSIGNEE OF GREAT WESTern Insurance Company,
v.
DANIEL WEBSTER.
} Bill of exceptions.

Be it remembered that upon the trial of this cause, the plaintiff, to

maintain the issue on his part, offered in evidence a pamphlet copy of the by-laws, prospectus, and charter of the Great Western Insurance Company, which are as follows, to wit:

20 *Prospectus and charter.*

Prospectus of the Great Western Ins. Co., showing charter, by-laws, place of business, etc.

Great Western Insurance Company, central office Chicago, Illinois.

Capital stock	$5,000,000 00
Subscribed capital	1,188,000 00
Cash capital	222,831 00

Chicago:
Jno. W. Dean, Printer, 115 and 117 Dearborn St. 1871.

Effectiveness of plan.

The plan on which this company is organized is simple and effective. It proposes the most ample and perfect protection to policy-holders, and a rapid accumulation of business at the smallest ratio of expense. The amount of capital stock is $5,000,000, with twenty per cent. paid in, thus securing a guarantee capital to policy-holders at once of $1,000,000. Dividends are to be made semi-annually, in cash, not to exceed five per cent. If the semi annual dividends exceed this amount (ten per cent. per annum) the sum will go toward paying up the remaining unpaid eighty per cent. The capital is not taken by a few persons, but is to be widely distributed.

Wherever $10,000 or more is subscribed, a branch office is established, with president and local board of officers. The stock at each locality will be represented at the annual meeting by the president or directors, or their legal representatives.

The managers and directors of the branches constitute an advisory board of management for the advancement of business, to guard against bad risks, and to promote the general interests of the company.

The Great Western Fire Insurance Company, corner LaSalle and Monroe streets, Chicago, H. L. Stewart, president; C. D. Hooker, secretary; R. J. Waters, vice-president; M. P. Stone, treasurer.

Statement, January 1st, 1871.

	Subscribed capital	$1,188,000 00
	Cash capital	222,831 42
21	Surplus	51,862 12
	Assets, January 1st, 1871	274,693 54

ASSETS.

First mortgages on real estate, duly recorded	$183,275 00
Cash in hand and in bank	16,622 37
Chicago West Side Park bonds	360 00
C. & N. W. R. R. land-certificates	4,530 00
Interest on mortgages, (not due)	10,345 25
Bills receivable, cash premiums on farm risks	16,607 04
Interest on the same	519 87
City collections and accounts	11,503 83
Office-furniture and personal property	4,219 47
Due from agents and insurance companies	26,710 71

LIABILITIES.

Losses adjusted, (paid since statement)	$1,417 68
Losses in process of adjustment	3,183 71
All other claims	1,634 09

STATE OF ILLINOIS, AUDITOR'S OFFICE,
Department of Insurance.

Whereas the Great Western Insurance Company, located at Chicago, in the State of Illinois, has filed in this office a statement of the condition of its affairs, as required by the provisions of an act approved March 11th, 1869, showing that it is possessed of the requisite amount of capital invested as required by law; and whereas an examination of the affairs and conditions of said company, made by me, in pursuance of the provisions of the act aforesaid, has fully verified the statement as filed in this office by said company:

Now, therefore, in pursuance of the provisions of the act aforesaid, I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the said Great Western Insurance Company is authorized to transact its appropriate business of fire-insurance in this State, in accordance with the laws thereof, until the 31st day of January, A. D. 1872.

22 In testimony whereof I have hereunto subscribed my name, and affixed the seal of my office, at Springfield, Illinois, this 28th day of February, A. D. 1871.

C. E. LIPPINCOTT,
Auditor of Public Accounts.

To the introduction of which the defendant objected, on the ground that there is nothing to show that the fourth section of said charter was ever amended as it purports to be, or that the capital stock was ever increased from $100,000 to $500,000, and also because the charter itself is a public act, and appears so in the authorized edition of the laws of Illinois, and should be shown in that way. Which objections were overruled by said court, and said pamphlet and charter read in evidence. To which said defendant then and there excepted. And that the plaintiff offered in evidence a certified copy of the papers on file in the auditor's office of the State of Illinois of the proceedings amending the charter of the company, so as to authorize the increase of the capital stock of said company, which certified copy is as follows:

Auditor's certified copy of proceedings increasing capital stock.

STATE OF ILLINOIS, AUDITOR'S OFFICE,
Department of Insurance.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that I have compared the annexed copies of papers in the matter of the increase of capital of the Great Western Insurance Company of Chicago, Illinois, with the original on file in this office, and that the same are correct transcripts therefrom and of the whole of said originals.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Springfield, this twenty-ninth day of August, A. D. 1872.

[AUDITOR'S SEAL.]

C. E. LIPPINCOTT,
Auditor of Public Accounts.

23 (Copy.) *Oath of directors.*

State of Illinois. Department of insurance, auditor's office.

OFFICE OF THE GREAT WESTERN INSURANCE COMPANY,
Chicago, Illinois, August 22, 1870.

We, the undersigned directors of the Great Western Insurance Company, of Chicago, Illinois, being duly sworn according to law, depose and say, and each one for himself says, that we compose a majority of the directors of the Great Western Insurance Company, of Chicago, Illinois, aforesaid; that said Great Western Insurance Company has a capital stock of five million dollars, divided into fifty thousand shares of one hundred dollars. One million and twelve thousand dollars of said capital is subscribed, and that eighteen and 33-100 (averaged) dollars upon each share, amounting in the aggregate to one hundred eighty-six thousand and three hundred and thirty-five and 93-100 dollars has been paid in by the several holders of the stock of said company, and said money has been paid in, in cash, by the stockholders towards the payment of their respective shares, and not for any other purpose whatever. And it is intended that the same shall remain as the capital of the company, and that the same is now invested, as required by the laws of this State.

H. L. STEWART,
JAMES MONTGOMERY,
H. A. BECK,
J. WOODWARD,
R. J. WATERS,
C. D. HOOKER,
CHAS. J. STOKES,
WASHINGTON LIBBY,
CHAS. B. SMITH,
A. S. PECK,
M. SMITH,
G. N. ARCHIBALD,
J. M. W. JONES,
E. EUGENE CALDWELL,
W. N. STURGES,
CHAS. V. DYER,
J. McK. SANGER,
L. S. MAJOR,

$5,000 stock, 20 per cent. paid in.

24 Subscribed and sworn to before me by each of the subscribers hereto on this 22d day of August, 1870.

Given under my hand and official seal.

[SEAL.] GEORGE C. CHRISTIAN,
Notary Public.

(Indorsed:) Filed August 23d, 1870. C. E. Lippincott, auditor public accounts.

Notice.

The Great Western Insurance Company, of Chicago, Illinois, hereby gives notice that it is the intention to increase its capital stock to five million dollars, three-fourths in amount of the stockholders thereof having given their written consent to such measure.

H. L. STEWART, *President.*

C. D. HOOKER, *Secretary.*

CHICAGO, ILLINOIS, *June 25th*, 1870.

I, the undersigned, one of the publishers of the Chicago Tribune, do hereby certify that a notice, of which the annexed is a true copy, was published for four successive weeks, to wit, four times in the daily edition of the Chicago Tribune, a newspaper published in the city of Chicago, and of general circulation throughout the county of Cook and State of Illinois, and that the date of the first paper containing the same was the 29th day of June, A. D. 1870, and that the date of the last paper containing the same was the 20th day of July, A. D. 1870.

Dated at Chicago, this 23d day of July, 1870.

[SEAL.] TRIBUNE CO., PUBLISHERS,
By J. T. FLYNN, *Cashier*.

[5-cent U. S. int. rev. stamp.]

We, the undersigned stockholders of the Great Western Insurance Company, of Chicago, Illinois, do hereby assent to and express our desire that the capital stock of said company shall be increased to five millions of dollars.

25 *Stockholders.*

Names.	Names.
H. L. Stewart.	M. Smith.
C. D. Hooker.	E. C. Stevens.
H. H. Peck.	J. D. Woodward.
Simeon Chase.	Fernando Jones.
Chas. J. Stokes.	James W. Rees.
R. J. Waters.	John W. Dean.
J. T. Foster.	A. S. Peck.
Chas. B. Smith.	Louis Nelkee.
J. R. Shipherd.	O. D. Morres.
J. McK. Sanger.	J. B. Sullivan.
Washington Libby.	Cass, Porter & Barrows.
J. S. Wallace.	Peter Caldwell.
L. P. Sanger.	Abram Van Dusen.
Benjamin Carver.	Suterlen, Classen & Co.
Philip Wadsworth.	Lewis Benedict.
James Montgomery.	Frederick Herhold.
John Lassen.	W. N. Sturgess.
Chas. V. Dyer.	H. H. Newell.
John F. Eberhart.	A. B. Pullman.
Austin Crover.	P. Shirley.
O. L. Mann.	A. C. Stewart.
J. M. W. Jones.	E. Eugene Caldwell,
Robert H. Foss.	Mary C. Sanger.
Chas. Shohn.	E. Van Buren.
	L. S. Major.

Charter of the Great Western Insurance Company, of Chicago, Illinois.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, that William W. Danenhower, Jacob Russell, Thomas Hale, George Ely, Robert H. Foss, and their successors and associates, be, and are hereby, created a body corporate and politic, under the name and style of the Great Western Insurance Com.

pany, situated at Chicago, and by that name shall have and enjoy all the rights and privileges and immunities that other like corporations have, and be recognized in all courts of justice and equity in this State.

SEC. 2. When the said party and their associates shall have
26 subscrided one hundred thousand dollars, paying in as a company fund five per cent. on the amount subscribed, and securing the balance to be paid on demand or otherwise, by approved judgment notes, by hypothecated stock, mortgages on real estate in Cook County or other satisfactory security, and shall have chosen nine directors, and these directors shall have chosen one of their number president, and appointed a secretary and treasurer, it shall be deemed fully organized and enjoy the powers herein conferred.

SEC. 3. The said company shall have power to make insurance, and take risks on all kinds of property, both marine and fire, and charge and receive such premiums as may be agreed by and between the parties, either upon the mutual or stock principle, or both.

SEC. 4. The company shall have power to use, invest or loan its surplus funds in or on bottomry or respondentia, in bonds, mortgages, or personal security, at such rates as private persons may legally do by the laws of this State, and may increase its capital to five hundred thousand dollars.

SEC. 5. The said company may establish agencies and do all acts not inconsistent with the constitution, the laws of this State or the United States, necessary to and for the full use and enjoyment, and to carry out the full objects of this act.

SEC. 6. This act shall be deemed a private act, and be liberally construed for the purposes therein contained, and take effect from and after its passage.

Approved February 4th, 1857.

Amendment to section four.

It is desired that this charter be amended so that section four (4) shall read:

The company shall have power to use, invest, or loan its surplus funds in or on stocks, bottomry, and respondentia in mortgages or personal securities, at such rates as private persons may legally do by the laws of this State, and may increase its capital stock to five millions of dollars.

Given under the seal of the Great Western Insurance Company this twenty-seventh day of June, 1870.

H. L. STEWART,
President.

[SEAL.] C. D. HOOKER,
Secretary.

27 STATE OF ILLINOIS, ATTORNEY-GENERAL'S OFFICE,
Springfield, July 25th, 1870.

I, Washington Bushnell, attorney-general of the State of Illinois, do hereby certify that I have examined the charter, amendments thereto, proof of publication, and the accompanying papers, in the matter of an increase of capital of the Great Western Fire-Insurance Company of Chicago, Illinois, to five million of dollars, and I find said papers conformable to the act of the general assembly of the State of Illinois, approved March 11th, 1869, and entitled "An act to incorporate and to

govern fire, marine, and inland navigation insurance companies doing business in the State of Illinois," and not inconsistent with the laws and constitution of the State of Illinois.

W. BUSHNELL,
Attorney-General of Ills.

To General C. E. LIPPINCOTT,
Auditor P. A., Springfield, Ills.

AUDITOR'S OFFICE, ILLINOIS, BUREAU OF INSURANCE,
Springfield, November 15, 1872.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify, from papers on file in this office, that on the 22d day of August, A. D. 1870, the capital stock of the Great Western Insurance Company of Chicago, Illinois, was, by the action, consent, and request of its stockholders and board of directors, authorized to be increased to the sum of five million dollars; and the fourth section of the original act of incorporation of said company was thereby amended and altered so that its capital stock might be increased to five million dollars in conformity to an act of the general assembly of the State of Illinois, approved March 11th, 1869.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and date first above written.

[SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

28 That the defendant objected to the introduction of the same on the ground that the names of the stockholders purporting to be signed thereto were not signed by the stockholders, and that the names of the directors purporting to be signed thereto were not signed by the *stockholders, and that the names of the directors purporting to be signed thereto were not signed by the* directors; which objections were overruled by said court, and said copy read in evidence, to which said defendant then and there excepted.

And that the plaintiff offered in evidence a certified copy from the auditor's office of the State of Illinois, of the charter of the company so amended, which is in the words and figures following, to wit:

Certified copy of amended charter.

Charter.—An act to incorporate the Great Western Insurance Company of Chicago, Illinois.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That William W. Danenhower, Jacob Russell, Thos. Hale, George Ely, Robert H. Foss, and their successors and associates, be and are hereby created a body corporate and politic under the name and style of the Great Western Insurance Company, situated at Chicago, and by that name shall have and enjoy all the rights and privileges and immunities that other like corporations have, and be recognized in all courts of justice and equity in this State.

SEC. 2. When the said party and their associates have subscribed one hundred thousand dollars, paying in, as a company fund, five per cent. on the amount subscribed, and securing the balance to be paid on demand or otherwise by approved judgment notes, by hypothecated stock, mortgages on real estate in Cook County, or other satisfactory security, and shall have chosen nine directors, and those directors shall

have chosen one of their number president, and appointed a secretary and treasurer, it shall be deemed fully organized, and enjoy the powers herein confirmed.

SEC. 3. The said company shall have power to make insurance and take risks on all kinds of property, both marine and fire, and charge and receive such premiums as may be agreed by and between the parties, either upon the mutual or stock principle, or both.

SEC. 4. The company shall have power to use, invest, or loan its surplus funds in or on stocks, bottomry and respondentia, in bonds, mortgages, or personal security, at such rates as private persons may legally do by the laws of this State, and may increase its capital to five hundred thousand dollars.

SEC. 5. The said company may establish agencies and do all acts not inconsistent with the constitution, the laws of this State, of the United States, necessary to and for the full use and enjoyment, and to carry out the full objects of this act.

SEC. 6. This act shall be deemed a private act, and be liberally construed for the purposes therein contained, and take effect from and after its passage.

Approved February 4, 1857.

WM. H. BISSELL,
Governor.

SAMUEL HOLMES,
Speaker of the House.
JOHN WOOD,
Lieut.-Governor and Speaker of the Senate.

UNITED STATES OF AMERICA,
State of Illinois, ss:

I, Ozias M. Hatch, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of an enrolled law now on file in my office.

In witness whereof I have hereunto set my hand and affixed the great seal of State, at the city of Springfield, this 4th day of February, A. D. 1857.

[SEAL.] OZIAS M. HATCH,
Sec'y of State.

Amendment of 4th section of charter, adopted by resolution of the stockholders and approved by the directors of said company June 25th, 1870, in accordance with the general insurance law of the State of Illinois, entitled "An act to incorporate and to govern fire, marine, and inland navigation insurance companies doing business in the State of Illinois," approved March 11th, 1869.

"Resolved, That the capital-stock of this company be increased to five million of dollars."

STATE OF ILLINOIS,
Insurance Department, Auditor's Office, ss:

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing is a true copy of the amended charter of the Great Western Insurance Company of Chicago, Illinois, now on file in my office.

In witness whereof I have hereunto set my hand and affixed my seal of office, at the city of Springfield, this twenty-eighth day of August, A. D. 1872.

[SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

And also a certified copy from said auditor's office of the report of the company, made to the said auditor in December, 1870, which is in the words and figures following, to wit:

Certified copy of report of December, 1870.

STATE OF ILLINOIS, AUDITOR'S OFFICE,
Department of Insurance.

I, Charles E. Lippincot', auditor of public accounts of the State of Illinois, do hereby certify that I have compared the annexed copy of the annual statement of the condition of the Great Western Insurance Company of Chicago, Illinois, for the year ending December 31st, 1870, made to this office pursuant to law, with the original on file in this office, and that the same is a correct transcript therefrom and of the whole of said original statement.

In witness whereof I have hereunto set my hand and affixed my official seal at the city of Springfield, this nineteenth day of November, A. D. 1872.

[SEAL.] C. E. LIPPINCOTT,
Auditor of Public Accounts.

31 STATE OF ILLINOIS, AUDITOR'S OFFICE,
Department of Insurance.

Annual statement of the condition of the Great Western (Fire) Insurance Company of Chicago, in the State of Illinois, for the year ending on the 31st day of December, 1870, made to the auditor of public accounts of the State of Illinois, pursuant to the laws of said State:

I. CAPITAL.

The amount of capital stock of the company now outstanding (par value of shares $100 each) is		$1,188,000 00
The amount of paid-up capital stock of the company		222,831 42
Amount of unpaid subscribed capital, for which the subscribers or holders are liable		965,168 58

II. ASSETS.

The amount of cash on hand in the company's office	$410 16	
The amount of cash deposited in the Third National Bank	6,022 37	
The amount of cash deposited in the Wilkins & Stones Bank	10,600 00	
The amount of cash in hands of agents and in course of transmission	26,300 55	
Total cash		43,333 08
Loans on bond and mortgage, (duly recorded and being first liens on the fee-simple,) upon which less than one year's interest is due, as per Schedule B		183,175 00

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	Total par value.	Total market value.
	$ cts.	$ cts.
Chicago West Side City Park bonds, 8 per cent	360 00	360 00
C. & N. W. R. R. land-certificates	9,060 00	4,530 00
Total par and market-value, (carried out at market-value,)	9,420 00	4,890 00
Interest accrued but not due		10,345 25
Bills receivable held by the company, considered good		16,607 04
Amount of United States internal-revenue stamps on hand		51 25
Office-furniture, horse, buggy, and outfit, personal property		4,219 47
Due from ins. co. and city collections		11,503 83
The aggregate amount of all the actual available assets of the company		274,124 92

III. LIABILITIES.

	$ cts.	$ cts.
Amount of losses adjusted but not due	1,417 68	
Amount of losses incurred during the year, including those claimed and not yet due, and including those reported, upon which no action has been taken	3,183 71	
Total amount of losses unpaid, including those unadjusted, reported, and resisted		4,601 39
Amount of unearned premium or premiums received on unexpired risks		80,838 69
Amount required to safely re-insure all the outstanding risks of the company, estimated at an average of 40 per cent. of unexpired premiums		32,385 47
Amount of all other claims against the company, consisting of the following items		1,634 09
Bills payable:		
Aggregate amount of all unpaid losses, claims, and liabilities, (except capital stock)		38,570 95

33

IV. INCOME.

	For fire-risks. Dols. Cts.	Dols. Cts.
Gross amount of cash actually received during the year for premiums	74,996 58	
Deduct amount paid for re-insurance and amount paid to the insured for drawbacks and returned premiums	2,245 19	
Total nett amount of cash actually received during the year for premiums, (carried out)		72,751 39
Premiums on risks written during the year not actually paid in cash during the year, including all premiums paid by notes or bills upon which cash has not been received during the year, (carried inside)	8,087 30	
Aggregate amount of income actually received during the year in cash		$72,751 39

V. EXPENDITURES.

	For fire-risks. Dols. Cts.	Dols. Cts.
Amount paid for losses which occurred during the year, deducting savings and salvage	5,344 11	
Total amount paid during the year for losses		5,344 11
Amount paid during the year to agents, brokers, and persons other than officers and directors of the company, for commissions on premiums		5,966 64
Amount paid during the year for salaries, fees, and all charges of officers and directors of the company		11,985 99
Amount paid during the year for national taxes and duties		1,498 69
General expenses and supplies. Adv		33,678 78
		58,474 21

34 VI. MISCELLANEOUS.

	Fire risks. Dols. Cts.	Aggregate. Dols. Cts.
Gross amount of risks written during the year	4,199,939 96	
Deduct amount of re-insurance effected thereon	30,500 00	
Nett amount of risks written during the year		$4,169,439 96

Amount of fire-risks in force at the end of the year....

	Dols. Cts.
Having not more than one year to run	3,922,931 63
Having more than one year and not more than three years to run	170,045 00
Having more than three years to run	75,563 33

	Aggregate. Dols. Cts.
Aggregate amount of risks in force Dec. 31st, 18—	4,169,439 96
Total amount loaned to directors of the company on bond and mortgage stock and other loans	143,800 00
The least amount of the company's stock owned by any one of the directors at its par value is	500 00
The total amount of the company's stock owned by all of the directors at its par value is	719,000 00

The par value of the stock of the company per share is $100, market-value per share is $20.

Are dividends declared on premiums received for risks not terminated? Answer. Yes.

The number of agents employed by the company in the State of Illinois is 93.

The principal office of the company is located at Chicago, Cook County, Illinois.

35 The company was incorporated Feb'y 4, 1857. Commenced business June 27, 1870. The duration of the charter is perpetual.

FIRE-RISKS.

Amount of risks taken during the past year in the State of Illinois	$2,010,135 16
Amount of premiums received during past year in the State of Illinois	33,373 16
Amount of losses incurred during the past year in the State of Illinois	3,368 92

STATE OF ILLINOIS,
County of Cook, ss:

H. L. Stewart, president, and C. D. Hooker, secretary of the Great Western Company, being duly sworn, depose and say, and each for himself says, that they are the above-described officers of the said company, and that on the thirty-first day of December last all of the above-described assets were the absolute property of the said company, free and clear from any liens or claims thereon, except as above stated, and that the foregoing statement, with the schedules and explanations hereto annexed and by them subscribed, are a true, full, and correct statement of the condition and affairs of the said company on the thirty-first day of December last, and for the year ending on that day, according to the best of their information, knowledge, and belief, respectively.

[COMPANY SEAL.] (Signed) H. L. STEWART,
President.

(Signed) C. D. HOOKER,
Secretary.

Subscribed and sworn before me this 10th day of January, 1871.

[SEAL.] (Signed) HENRY WISNER,
Notary Public.

Containing a description of all the bonds and mortgages owned by the Great Western Insurance Company on the 31st day of December, 1870, the amount of principal unpaid thereon, with the company's valuation of the mortgaged premises, the amount for which the company hold fire-insurance policies on the buildings as collateral security, and the location and dimensions of the land, with the size and description of the buildings.

No.	Names of mortgagors.	Date of mortgage.	Mortgages recorded.			Amount of principal unpaid.	Valuation of premises in buildings.	Amount of insurance held by company on building.	Location, street, and number.	Quantity or dimensions of land, and size and description of building.
			In county of—	Book of mortgages.	Page.					
54636	H. L. Stewart	June 1. 1870	Cook	134	372	40,000 00	62,000 00		Sec. 1, R. 13, T. 38	38 acres, S. Chicago.
12479	Abner Peck	Ap'l 28, "	Knox	12	479	10,000 00	20,000 00	6,000 00	Sec. 3, R. 3, T. 13	160 " Knox Co., Ill.
54162	J. M. W. Jones	May 1, "	Cook	137	360	10,000 00	15,000 00		Sec. 17, R. 14, T. 40	Bl'ks 25 & 26, Chicago.
53251	A. N. Waterman	May 1, "	"	134	359	2,000 00	3,000 00		Bl'k 23, lot 2	W. Chicago.
	S. C. Chamberlain	Ap'l 21, "	Winnebago	43	293	2,500 00	4,000 00		Sec. 23, R. 1, T. 41	Lots 1, 2, 3, 4, 5, 6, 8.
52905	Harlan H. Peck	Mar. 22, "	Cook	134	355	3,600 00	5,400 00		Sec. 6, R. 14, T. 39	Lots 8, 9, 2, 3, 3, 12.
52907	E. Eugene Caldwell	Ap'l 14, "	"	145	394	3,600 00	5,400 00		Sec. 6, R. 14, T. 39	Bl'k 123, lots 7, 1, 1, 2, 18.
52906	Russel J. Waters	Mar. 10, "	"	134	356	1,800 00	2,800 00		Sec. 6, R. 14, T. 39	Lots 10, 11, 11, Chicago.
52908	A. N. Waterman	Ap'l 23, "	"	145	395	3,600 00	4,500 00		Sec. 6, R. 14, T. 39	Lots 4, 12, 13, 16, "
2921	C. D. Hooker	Ap'l 21, "	Lake	34	463	1,200 00	200 00		Bl'k 23	Lot 4, Highland Pk.
54637	H. H. Peck	June 1, "	Cook	134	384	600 00	900 00		Sec. 6, R. 14, T. 39	Lot 7, W. Chicago.
54516	H. H. Peck	May 23, "	"	134	373	1,200 00	1,800 00		Sec. 6, R. 14, T. 39	Lots 4, 5.
55134	O. P. Axtell	June 4, "	"	135	538	10,000 00	30,000 00		Sec. 14 & 12, R. 14, T. 35	240 acres.
51808	M. Smith	May 9, "	"	134	347	10,000 00	15,000 00		Sec. 13, R. 13, T. 39	40 acres.
54263	A. S. Peck	June 3, "	"	134	365	10,000 00	22,000 00		Sec. 17 & 18, R. 14, T. 13	Bl'k 14, 22 lots.
2954	J. D. Woodward	June 8, "	Lake	34	470	1,200 00	2,000 00		Bl'k 23	Lot 22.
45	S. C. Chamberlain	Nov. 13, "	Winnebago	29	310	3,000 00	5,000 00		Sec. 14, R. 4, T. 20	160 acres.
68936	James Montgomery	Oct. 10, "	Cook	154	392	20,000 00	45,000 00		Sec. 15, R. 14, T. 38	Bl'k 3, S. Chicago.
37										
74259	J. D. Woodward	Nov. 23, "	Cook	640	216	15,000 00	39,000 00	8,000 00	Lot 881, bl'k 12	Riverside.
73889	J. D. Woodward	Nov. 19, "	"	149	354	800 00	1,600 00		Sec. 9, R. 14, T. 38	Bl'k 1, lot 35.
73275	J. D. Woodward	Nov. 15, "	"	154	539	2,000 00	4,000 00		Sec. 9, R. 14, T. 38	Bl'k 2, lot 16.
77099	Mary C. Sanger	Dec. 16, "	"	155	32	10,000 00	30,000 00		Sec. 32, R. 14, T. 41	10 acres.
	J. W. Ellis	Aug. 27, "	Davis Co., Ia.	A	516	2,000 00	7,000 00		P't S. E. ¼ sec. 25, R. 70	T. 14, S. E. ¼ of S. E. ¼ sec. 16, 70, 14.
	J. B. Glenn	" "	"	"	518	2,000 00	4,500 00		Lot 3, bl'k 18	Bloomfield, Ia.
	Baptist Hardy	" "	"	"	514	1,000 00	2,000 00		E. ½ of S. W. ¼ sec. 30	68, 13.
	E. G. Hardy	" "	"	"	520	1,000 00	2,500 00		W. ½ S. W. ¼ sec. 30, 68	13.
	George Duffield	" "	"	"	526	2,000 00	5,000 00		Lot 6, bl'k 18	Bloomfield, Ia.
	W. G. Davis	" "	"	"	522	1,000 00	2,500 00		E. ½ S. W. ¼ S. 5, 68, 13	

Amen Bunk	"	"	"	"	527	1,000 00	2,000 00		P't N. E. ¼ S. 4, 67, 13	and S. W. ¼ of S. W. 35, 68, 13.
J. R. Sheaffer	"	"	"	"	525	1,000 00	2,000 00		Lot 7, bl'k 18	Bloomfield, Ia.
Thos. Davis	"	"	"	"	521	2,000 00	4,000 00		E. ½ S. W. ¼ S. 5, T. 68	R. 13, 80 acres.
A. H. Putnam	"	"	"	"	519	2,000 00	5,000 00		S. ½ S. E. ¼ sec. 27, 69	14 and N. ½ N. E. ¼, S. 29, 69, 14.
Wm. Hill	"	"	"	"	524	2,000 00	10,000 00		P't of bl'k 24	Bloomfield, Iowa.
T. M. Fenton	"	"	"	"	527	1,000 00	2,500 00		Lot 1 and 2, B. 18	Bloomfield, Iowa.
John M. Johnson	"	"	"	"	515	200 00	1,200 00		Lot 2, bl'k 10	Bloomfield, Iowa.
J. D. Tribelcox	"	"	"	"	523	2,000 00	3,500 00		Lot 2, bl'k 32	Bloomfield, Iowa.
Horace Hamilton	Nov. 8,	"	Clay Co., Ia.	3	284	100 00	400 00		Lots 1, 2, 3, B. 10	McGregor, Iowa.
A. J. Jordon	"	"	"	2	458	200 00	400 00		Lots 11, 12, B. 36	McGregor, Iowa.
Oli Nelson	"	"	"	12	198	200 00	800 00		Sec. 13, R. 3, T. 95	80 acres.
T. E. Carter	Nov. 26,	"	Chideson	G	340	375 00	1,000 00		Sec. 28, R. 14, T. 96	40 acres.

(Signed) H. L. STEWART, *President.*
(Signed) C. D. HOOKER, *Secretary.*

38 And also the license issued to the company to do business, which said license is in the words and figures following, to wit:

License.

AUDITOR'S OFFICE, ILLINOIS,
Bureau of Insurance.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the annexed is a true and correct copy of a certificate of authority issued by me to J. W. Adgate, of Jacksonville, to transact business for the Great Western Insurance Company of Chicago, Illinois, as shown by the records of my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office, at Springfield, this 22d day of November, A. D. 1872.

[SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

STATE OF ILLINOIS, AUDITOR'S OFFICE,
Insurance Department, Springfield, August 31st, 1870.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that there has been filed in this office a sworn statement showing the condition of the Great Western Insurance Company, located at Chicago, in the State of Illinois, on the 25th day of August, A. D. 1870, in accordance with the provisions of an act of the general assembly of the State of Illinois, to incorporate and to govern fire, marine, and inland navigation insurance companies doing business in the State of Illinois, approved March 11th, 1869, and said statement shows that said company is possessed of the requisite amount of capital invested as required by law.

Authority is therefore given to the above-named company to transact its appropriate business of fire insurance in this State, in accordance with the laws thereof, until the 31st day of January, A. D. 1871.

I further certify that J. W. Adgate, of Jacksonville, is hereby
39 authorized as an agent to transact business, according to law, for said company.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at Springfield, the day and year above written.

[SEAL.] (Signed) C. E. LIPPINCOTT,
Auditor of Public Accounts.

And the report of the examination by said auditor of the affairs of said company, which said report is in the words and figures following, to wit:

Report of examination.

AUDITOR'S OFFICE, ILLINOIS,
Bureau of Insurance.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that on the twenty-seventh day of January, A. D. 1871, I made an examination of the affairs of the Great Western Insurance Company, of Chicago, Illinois, by Lotus Niles, esq., my agent, duly appointed by me in conformity to law, and that the annexed is a true and correct copy of the report of said Lotus Niles concerning said examination.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, this 19th day of November, A. D. 1872.

[SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

STATE OF ILLINOIS,
Auditor's Office:

DEPARTMENT OF INSURANCE,
Springfield, Jan. 19th. 1871.

To LOTUS NILES, Esq., Springfield:

SIR: In pursuance of the provisions of the act of the general assembly of the State of Illinois entitled "An act to incorporate and to govern fire, marine, and inland navigation insurance companies doing business in the State of Illinois," approved March 26th, 1869, you are
40 hereby appointed and authorized to examine the capital, securities, and affairs of the Great Western Fire Insurance Company of Chicago, in the State of Illinois, and make report to me, under your own oath and the oaths of the president and secretary of said company, according to the forms annexed to this appointment.

In testimony whereof I hereunto subscribe my name and affix my seal of office the day and year first above written.

[SEAL.] (Signed) C. E. LIPPINCOTT,
Auditor of Public Accounts.

To the honorable C. E. Lippincott, auditor of public accounts of the State of Illinois:

The undersigned, in pursuance of the appointment hereto annexed, bearing date the 19th day of January, A. D. 1871, has personally made an examination of the capital, securities, and affairs of the Great Western Insurance Company of the city of Chicago, in the State of Illinois, an insurance company claiming to have complied with all the requirements of said act, and hereby certifies that the capital of said company, as fixed by its charter, is thousand dollars, of which there has been two hundred twenty-two thousand eight hundred thirty-one $\frac{42}{100}$ ($222,831.42) dollars paid in and is now possessed by said company in money, or in the stocks, bonds, and mortgages required by said act aforesaid, as part of the assets of the company, as shown in Schedule A, hereunto annexed; and the statement of the affairs of the company, as sworn to by the president and secretary of the company, and attached hereto and marked Schedule B, has been carefully compared by me with the books, vouchers, and papers of the company, as now on file in the company's office; and I find said statement in every particular to be correct, except as modified or changed in Schedules A B, hereto attached; and the officers of said company have furnished me satisfactory evidence that the company, in its own right, is possessed of all the assets and property as claimed in said statement, except the changes noted in Schedule A hereof.

In testimony whereof I hereto subscribe my name this 27th day of January, A. D. 1871.

(Signed) LOTUS NILES.

41 STATE OF ILLINOIS, *County:*

I, Lotus Niles, do solemnly swear that the foregoing report, subscribed by me, is true in every particular, to the best of my knowledge, information, and belief.

(Signed) LOTUS NILES.

Sworn to before me and subscribed in my presence, by the above-named Lotus Niles, this 27th day of January, A. D. 1871.

Given under my hand and official seal.

[SEAL.] (Signed) RUSSELL J. WATERS,
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

Russell J. Waters and Chester D. Hooker do solemnly swear that said Russell J. Waters is the vice-president and said Chester D. Hooker is the secretary of the Great Western Insurance Company above named; that said company is organized in good faith for the purpose of transacting the business of fire-insurance, at Chicago, in the State of Illinois; that the securities and property exhibited by them as the assets of said company to the above-named Lotus Niles, (who was appointed by the auditor to examine the same,) are truly set forth and specified in Schedule A, hereto annexed, and are bona fide the property of and now owned and possessed by said company in its corporate capacity; that no part of said assets has been withdrawn, pledged, or in any manner impaired nor loaned or advanced to said company, for the purpose of being exhibited as part of its assets.

(Signed) RUSSELL J. WATERS,
Vice-President.

(Signed) C. D. HOOKER, *Secretary.*

Sworn to by the said Russell J. Waters and Chester D. Hooker before me, and subscribed to by them in my presence this 27th day of January, A. D. 1871.

(Signed) LOTUS NILES.

42 SCHEDULE A.

Containing a particular description of all the actual assets owned by the Great Western Fire-Insurance Company on the 31st day of December, 1870:

	Dols.	Cts.
Amount of cash on hand in the company's office, as shown by the company's books	428	97
Amount of cash deposited in the Third National Bank of Chicago, verified by the books of the bank	4,874	50
Amount of cash in hands of agents and in course of transmission—this is the balance due of agents' accounts since October, 1870, the largest portion of which is of the month of Dec., 1870, and is probably good	35,800	55
Loans on bonds and mortgages on which less than one year's interest is due, duly recorded, and being first liens on the fee-simple, as per Schedule B. The amount of said loans on real estate lying in the State of Illinois is (and evidence of record and value was exhibited, and in the case of all taken since previous examination, abstracts of title were furnised) the sworn statement of J. T. Foster and Geo. W. Parker, freeholders of Chicago, the value placed on No. 77099 of the schedule. The statement of Harlan H. Peck was received as to the value of No. 73889 and 73275. Affidavits were furnished		

as to the balance of the property. The amount of said loans on real estate lying in the State of Iowa is $21,075.00. The usual evidence of record is indorsed on the mortgages, and a sworn statement of three citizens of Iowa was furnished as to the value of the land lying in Davis Co. Statement was furnished, but not under oath, as the lands in Clayton and Chickasaw Counties. No abstracts of title or certificates thereof were furnished. I called the attention of the Co. to sec. 8 of the insurance law, which, in effect, prohibits loans
43 on real estate lying out of this State. I have not thought it best, from the foregoing facts, to extend this amount 162,100 00

2 Chicago West Side City Park bonds, 8 per cent.; No. 154, $200, and 156, $160 ..... 360 00

9 Chicago N. W. R. R. land certificates: No. 490, $480; 513, $1,920; 520, $1,860; 512, $960; 503, $960; 507, $960; 510 $960; 495, $480; 499, $480 ..... 4,530 00

Amount of interest on notes for premium not due 583 91

Interest accrued, but not due, on bonds and mortgages, (including interest on the Iowa mortgages) 10,345 25

Bills receivable held by the company considered good, viz, stock-notes drawing no interest 7,495 00

Notes for premiums, mostly for current business in 1870 .. 8,528 13

Amount of United States internal-revenue stamps on hand 51 25

Amount of all other property belonging to the company, consisting of the following items: Office furniture 1,569 47

Horse, buggy, and outfit 650 00

Charter expenses, $2,000. This item I do not value.

Amount due from "city collections," for commissions, brokerage, money loaned, stock, etc., being ledger balances 11,503 83

$248,820 86

Note "A."—The "gross amount of cash actually received during the year for premiums" includes the amount in the hands of agents in the course of transmission.

Note "B."—"Amount paid during the year for salaries, fee, and all charges of officers and directors of the company," includes the salaries of general agents.

Note "C."—Amount paid during the year for national taxes and dues, includes the amount paid for stamps, taxes, $327.06, rev. stamps, $1,171.63.

Note "D."—"General expenses, supplies, and advertising," em-
44 braces the following items, viz: Stock 'count, $7,987.10; advertising, $950.91; charter, $2,000.00; supplies, $4,917.59; interest, $1,172.82; foreign exp. and $5,272.53; city expenses, $3,527.97; office-furniture and fixtures, $2,219.47; sundry expenses, not included in the foregoing, $5 592.89; profit and loss, $3,750.

(Signed) LOTUS NILES.

(Indorsed:) Filed February 27th, 1871. (Signed) C. E. Lippincott, auditor public accounts.

To all of which documents defendant then and there objected as immaterial; which objections were overruled by said court, and said

documents read in evidence. To all which defendant then and there excepted.

And the plaintiff also offered in evidence the deed to said assignee; which said deed is in the words and figures following, to wit:

Deed to assignee.

In the district court of the United States for the northern district of Illinois.

IN THE MATTER OF THE GREAT WESTERN INsurance Company, bankrupt. } In bankruptcy.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Know all men by these presents that Clark W. Upton, of Chicago, in the county of Cook and State of Illinois, in said district, has been duly appointed assignee in said matter. Now, therefore, I, Homer N. Hibbard, one of the registers of said court in bankruptcy, by virtue of the authority vested in me by the 14th section of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, do hereby convey and assign to the said Clark W. Upton, assignee as aforesaid, all the estate, real and personal, of the said The Great Western Insurance Company of Chicago, bankrupt aforesaid, including all the property of whatever kind of which he is possessed, or in which he was interested or entitled to have on the sixth day of February, A. D. 1872, with all his deeds,
45 books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said 14th section of said act, to have and to hold all the foregoing premises to the said Clark W. Upton, and his heirs, forever; in trust, nevertheless, for the uses and purposes, with the powers and subject to the conditions and limitations set forth in said act.

In witness whereof I, the said register, have hereunto set my hand and caused the seal of said court to be affixed this eleventh day of April, A. D. 1872.

[SEAL.] H. N. HIBBARD,
Register in Bankruptcy.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, Homer N. Hibbard, a register in bankruptcy in and for the said district, do hereby certify the foregoing to be a true copy of the deed of assignment of the estate and effects of said bankrupt in the matter of the Great Western Insurance Company of Chicago, bankrupt.

Dated this 25th day of September, A. D. 1872.

H. N. HIBBARD,
Register in Bankruptcy.

And that said plaintiff introduced evidence to show that the following was the form of stock-certificate issued to Hale and transferred to Webster:

THE GREAT WESTERN INSURANCE COMPANY.

(Number.) (Shares.

(Capital stock $500,000, with libertyty to increase to 5,000,000 dollars.

Organized July 20th, 1857, under act of legislature approved Mrch 4th, 1857.

Non-assessable.

This is to certify that is entitled to shares in the capital-stock of the Great Western Insurance Co. of Chicago, Ill's, of one hundred dollars eaeh, of which twenty per cent. is payable as follows: Five per cent. on receipt of stock-certificate; five per cent. in three months from date hereof; five per cent. in six months from date hereof; five per cent. in nine months from date, transferrable only on the books of the company in person or by attorney, or the surrender of this certificate, being subject to the charter and by-laws of said corporation, and laws of the State of Illinois.

Dated at Chicago this day of , in the year of our Lord one thousand eight hundred and

($100.)

Secretary. *President.*

[Stamp.]

[The bill of exceptions in this case may be amended as above.
BOUTELL & WATERMAN.]

46 Evidence was given tending to show that one Hale was the owner of a large amount of stock of said company, for which he held the company's certificates; that he had, through his broker, sold one hundred shares to this defendant, on which twenty per cent. had been paid; also evidence tending to show that the defendant's name was on the stock-ledger, and also evidence tending to show that the defendant transferred, or caused said stock to be transferred to him, on the books of the company. And that the plaintiff offered in evidence the order of said district court, making a call or assessment upon the stockholders of said company for the unpaid portion thereof, which order was entered of the 5th day of July, A. D. 1872, and was as follows, to wit:

Order for payment of stock.

IN THE MATTER OF THE GREAT Western Insurance Company, bankrupt. } In bankruptcy.

And now, on this day, comes C. W. Upton, assignee of the estate of said bankrupt, and makes application to this court, showing that a large amount of the capital-stock of the said bankrupt remains unpaid in part; that the whole amount of such capital-stock will be required to be paid in order to meet the demands now due from and proven against the estate of said bankrupt; and upon investigation of the facts in the matter, and the court being fully advised in the premises, it is ordered that the entire amount unpaid of the capital-stock of said bankrupt be paid to said assignee on or before the 15th day of August, A. D. 1872, at his office, in Chicago, Illinois, and in default thereof that said as-

signee proceed to collect the same. It is further ordered that notice of this call be given to the stockholders of said bankrupt, so far as known, without unreasonable delay, by publication or otherwise.

47 To the introduction of which the defendant objected, on the ground that it did not appear that any personal notice was given to any of the stockholders of said company or to this defendant, of any application for such order, or any hearing of the same by said court, and defendant offered to show that he received no notice of any intention of making such application; that no notice thereof was ever served upon her, and that it was unnecessary to make so large an assessment; that an assessment of a much smaller sum would have been sufficient to pay the losses of said company, which objections and offers were overruled by said court and rejected by said court, and said order was read in evidence, to all of which defendant then and there excepted.

No evidence was offered tending to show that the directors of said company had made any call for the payment of any portion of said stock under the direction of the stockholders, or that the stockholders, or any majority of them represented at any regular meeting, had ever instructed the directors to make such a call as was required by the conditions expressed in said certificates of stock.

IN THE MATTER OF THE GREAT WESTERN Insurance Company, bankrupt. } In bankruptcy.

And now on this day comes C. W. Upton, assignee of the estate of said bankrupt, and makes application to this court showing that a large amount of the capital stock of the said bankrupt remains unpaid in part; that the whole amount of such capital stock will be required to be paid in order to meet the demands now due from and proven against the estate of said bankrupt, and upon investigation of the facts in the matter, and the court being fully advised in the premises, it is ordered that the entire amount unpaid on the capital stock of the said bankrupt be paid to said assignee on or before the 15th day of August, A. D. 1872, at his office in Chicago, Illinois, and in default thereof, that said assignee proceed to collect the same. It is further ordered, that notice of this call be given to the stockholders of said bankrupt so far as known without unreasonable delay, by publication or otherwise.

48 The holders of the unpaid capital stock in said bankrupt corporation will please take notice and govern themselves accordingly. Under the order of the court, and the action of the officers of said company prior to bankruptcy, per cent. of the stock held by you, now standing on the books of said bankrupt, is long past due; the balance, by the order of said court, will become due August 15th, 1872. By a prompt remittance of the amount now due, costs will be avoided.

Respectfully,

C. W. UPTON, *Assignee.*

Charge to jury.

Gentlemen of the Jury: No question is made of the regularity of the organization of the Great Western Insurance Company. The only question is, Was the defendant a stockholder of the company? If the testimony satisfies you that the defendant purchased of the witness, Hale, one hundred shares of this stock, and that it was transferred on the books of the company either by Webster, the defendant, or by —

Hale, who sold the stock, or by the direction of either of them, then the defendant is liable, the same as if he had subscribed for the stock. Now, Webster swears that he received the certificate from Hale or his broker in blank; that he put it in his safe, where it remained until the great fire of 1871; that he never had it transferred on the company's books. On the other hand, you have the testimony of several witnesses that they saw the name of Daniel Webster on the stock-book. Now, gentlemen, who put it there? It must have been put there by some one who knew the fact of such stock being owned by Webster, and then you will recollect that Loomis, the broker, who sold the stock for Hale to Webster, testified that he heard Webster say that he had it transferred, as he wanted it in his own name. It is true that Webster testified that he did not have it transferred on the books, but it is proper that I should remind you that Webster is the defendant, and is an interested witness, while the other witnesses are disinterested. You may believe Webster, however.

Unless the stock was transferred on the company's books by either Webster or Hale, or by their direction, or the direction of one of them, the plaintiff cannot recover; because he did not become a stock-
49 holder, he could not receive dividends, and there was no privity between him and the company. If you find for the plaintiff, you will assess the damages at eighty per cent. on the one hundred shares, with interest; if you find for the defendant, you will simply say so.

That the defendant then and there objected to the giving of said instructions, which objection was overruled by said court; to which defendant then and there excepted.

And that after receiving said instructions from said court the jury retired, and thereafter rendered a verdict for the plaintiff. That thereupon defendant moved for a new trial in said cause, which motion was overruled by said court; to which defendant then and there excepted. That thereupon said court rendered judgment in said cause for said plaintiff; to which defendant then and there excepted. And inasmuch as the foregoing matters do not appear of record in said cause, defendant prays that this his bill of exceptions may be signed and sealed and made a part of the record in said cause, and it is done accordingly.

J. C. HOPKINS, [SEAL.]
Presiding Judge.

(Indorsed:) Filed Dec. 9th, 1873. Wm. H. Bradley, clerk.

Bond in error.

Know all men by these presents that we, Daniel Webster, Charles Gregory, and Marshall Carter, of Chicago, Cook County, Illinois, are held and firmly bound unto Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company of Chicago, in the sum of ten thousand dollars, to be paid to the said Clark W. Upton, his successors or assigns, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, signed and sealed with our seals this third day of February, A. D. 1874.

Whereas the above-named Daniel Webster hath prosecuted a writ of error to the circuit court of the United States for the northern
50 district of Illinois, to reverse the judgment rendered in the case wherein Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company of Chicago, was plaintiff, and the said

Daniel Webster was defendant, by the district court of the United States for the northern district of Illinois, for the sum of eight thousand six hundred and thirty dollars and seventy-three cents, and costs of suit, on the ninth day of December, A. D. 1873: Now, therefore, the condition of this obligation is such, that if the above-named Daniel Webster shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

DANIEL WEBSTER. [SEAL.]
CHARLES GREGORY. [SEAL.]
MARSHAL CARTER. [SEAL.]

Approved.

H. W. BLODGETT, *Judge.*

(Indorsed:) Filed Feb. 4, 1874. Wm. H. Bradley, clerk.

Writ of error.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the honorable the judge of the district court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said district court, before you, between Clark W. Upton, assignee of the Great Western Insurance Company, a bankrupt, plaintiff, and Daniel Webster, defendant, a manifest error hath happened, to the great damage of the said Daniel Webster, as by his said complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf:

You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and
51 proceedings aforesaid, with all things concerning the same, to the circuit court of the United States for the northern district of Illinois, together with this writ, so that you have the same at Chicago, in said district, on the first Monday of March next, in the said circuit court to be then and there held, that, the record and proceedings being inspected, the said circuit court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Nathan Clifford, acting Chief-Justice of the Supreme Court of the United States, this tenth day of December, A. D. 1873, and of our Independence the 98th year.

[SEAL.] WM. H. BRADLEY,
Clerk of Circuit Court of the United States for the Northern District of Illinois.

The United States of America to Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States, to be holden at Chicago, on the first Monday of March next, pursuant to a writ of error, filed in the clerk's office of the district court of the United States for the northern district of Illi-

nois, wherein Daniel Webster is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Henry W. Blodgett, judge of the said district court of the United States, this 22nd day of February, in the year of our Lord one thousand eight hundred and seventy-four.

H. W. BLODGETT,
Judge.

52 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a full, true, and complete transcript of the record and proceedings had in the case of Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, a bankrupt, against Daniel Webster, as the same appears from the records of said court now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 22nd day of February, A. D. 1874, and of the Independence of the United States the ninety-eighth year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Endorsed:) Filed April 27th, 1874. Wm. H. Bradley, clerk.

53 Afterwards, to wit, on the 26th day of May, A. D. 1874, said Daniel Webster, plaintiff in error, by his attorneys, filed in the office of the clerk of said circuit court his bond for costs, and his assignment of errors in said entitled cause, which said bond and said assignment of errors are respectively in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA.
Northern District of Illinois, ss:

Circuit court, May term, A. D. 1874.

DANIEL WEBSTER
vs.
CLARK W. UPTON, ASSIGNEE. } In appeal from district court.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiff of
54 any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against my property for any costs taxed against him. Dated this 26 day of May, A. D. 1874.

E. VAN BUREN.

(Endorsed:) May 26, A. D. 1874. Wm. H. Bradley, clerk.

Assignment of errors.

United States circuit court for the northern dist. of Ills.

DANIEL WEBSTER, PLTFF. IN ERROR,
vs.
CLARK W. UPTON, ASSIGNEE, &C., DEFENDANT in error.

And now comes the plaintiff in error & assigns the following error:
1. The judgment is against evidence.
2. The judgment is against the law.
55 3. The judge erred in his charge or instructions to the jury.
4. The judgment is not sustained by the law or evidence in this case.
5. There is a variance between the testimony & the declaration.

E. & A. VAN BUREN,
Attys. for Pltff. in Error.

Clark W. Upton, assignee, &c., the deft. in error, comes & says that there is no error either in the record & proceedings aforesaid, or in giving judgment aforesaid in manner & form as above assigned, & thereupon he prays that said judgment be affirmed.

By his attys., BOUTELL & WATERMAN.

(Endorsed:) Filed May 26th, 1874. Wm. H. Bradley, clerk.

56 Afterwards, to wit, on the same day, to wit, on the 26th day of May, in the adjourned May term, A. D. 1874, of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Thomas Drummond, judge, appears the following entry, to wit:

DANIEL WEBSTER
vs.
CLARK W. UPTON, ASSIGNEE, &C. } Writ of error from district court.

Now come the parties, by their attorneys, and thereupon this cause is set down for hearing upon the record filed herein from the district court, and after hearing the same and the arguments of counsel, the court, not being sufficiently advised in the premises, takes time to consider.

57 Afterwards, to wit, on the 28th day of May, in the adjourned May term, A. D. 1874, of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Thomas Drummond, circuit judge, appears the following entry, to wit:

DANIEL WEBSTER
vs.
CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of the Great Western Insurance Company. } Writ of error from district court.

The court having considered and being now fully advised upon the matters heretofore submitted herein, affirms the judgment of the district court herein, with costs.

And it appearing to the court from the record herein that the
58 said Clark W. Upton, assignee in bankruptcy of the Great West-

ern Insurance Company, the defendant in error, recovered, in the district court, on the ninth day of December, A. D. eighteen hundred and seventy-three, a judgment against the said Daniel Webster, the plaintiff in error, for the sum of eight thousand six hundred and thirty dollars and seventy-three cents damages and fifty dollars and twenty-one cents costs:

It is therefore considered and adjudged by the court that the said Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, the defendant in error, do have and recover of the said Daniel Webster, the plaintiff in error, the said sum of eight thousand six hundred and thirty dollars and seventy-three cents, his
59 damages, and fifty dollars and twenty-one cents costs, being the amount of the judgment in the district court, and the further sum of two hundred and forty-four dollars and fifty cents, the interest accruing on said judgment, making in all for said judgment and interest the sum of eight thousand nine hundred and twenty-five dollars and forty-four cents, together with his costs and charges herein, amounting to the sum of fifty dollars and thirty-five cents, and that he have execution therefor.

Afterwards, to wit, on the 20th day of July, A. D. 1874, said Daniel Webster, by his attorneys, filed in said clerk's office his bond in said-entitled cause, which said bond is in the words and figures following, to wit:

60 *Supersedeas bond.*

Know all men by these presents that we, Daniel Webster, Charles Gregory, and Marshall W. Carter, are held and firmly bound unto Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, of Chicago, in the full and just sum of twelve thousand dollars, to be paid to the said Clark W. Upton, his successors, attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents, sealed with our seals and dated this twenty-ninth day of June, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately, at a session of the circuit court of the United
61 States for the northern district of Illinois, in a suit depending in said court between Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, of Chicago, plaintiff, and Daniel Webster, defendant, a judgment was rendered against the said defendant for the sum of eight thousand six hundred and thirty dollars and seventy-three cents and costs of suit, and the said Daniel Webster having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, of Chicago, citing and admonishing to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of October next:

62 Now, the condition of the above obligation is such that if the said Daniel Webster shall prosecute his said writ of error to effect and answer all damages and costs if he fail to make his plea good,

then the above obligation to be void, else to remain in full force and virtue.

DANIEL WEBSTER. [SEAL.]
CHARLES GREGORY. [SEAL.]
MARSHALL W. CARTER. [SEAL.]

Approved by

THOMAS DRUMMOND.

(Endorsed:) Filed July 20th, 1874. Wm. H. Bradley, Clk.

63 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in said-entitled cause, wherein said Daniel Webster is plaintiff in error and said Clark W. Upton, assignee, &c., is defendant in error, as appears from the records of said court remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court at Chicago in said district this twentieth day of August, A. D. eighteen hundred and seventy-four, and of our Independence the 99th year.

[SEAL.] WM. H. BRADLEY, *Clk.*

64 *Assignments of error.*

Circuit court of the United States for the northern district of Illinois.

DANIEL WEBSTER, PLAINTIFF IN ERROR,
v.
CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of the Great Western Insurance Company, defendant in error. } In error.

And now comes the said plaintiff in error, by E. and A. Van Buren his attorneys, and assigns the following errors in the record and proceedings aforesaid, to wit:

The circuit court of the United States for the northern district of Illinois erred in affirming the judgment of the district court of the United States for the northern district of Illinois.

E. AND A. VAN BUREN,
Attys. for Pltff. in Error.

Clark W. Upton, assignee, &c., the defendant in error, comes & says that there is no error either in the record & proceedings aforesaid or in giving judgment aforesaid in manner & form as above assigned, & therefore he prays that said judgment may be affirmed.

By his attys.,

BOUTELL & WATERMAN.

65 UNITED STATES OF AMERICA, *ss:*

The United States of America to the honorable the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Daniel Webster, plaintiff in error, and Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, defendant in error, a manifest error hath happened, to the great damage of the said Daniel Webster, as by his complaint appears:

66 We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the 28th day of May, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the 98th year.

[SEAL.]

WM. H. BRADLEY,
Clerk of the Circuit Court of the United States for Northern District of Illinois.

(Indorsed:) Circuit court of the United States for the northern district of Illinois. Daniel Webster, plff. in error, vs. Clark W. Upton, assignee, &c., deft. in error. Writ of error.

67 Circuit court of the United States for the northern district of Illinois.

The United States of America to Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second, Monday of October next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Daniel Webster is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Thomas Drummond, judge of said circuit court for the northern district of Illinois, this second day of September, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-ninth year.

THOMAS DRUMMOND.

68 We admit service of the within.

CLARK W. UPTON,
Assignee of Great Western Ins. Co.,
By UPTON, BOUTELL & WATERMAN,
His Attys.

(Indorsed:) Circuit court U. S., nor. dist. Ills. Daniel Webster, plaintiff in error, vs. Clark W. Upton, assignee, &c., defendant in error. Citation.

(Indorsement on cover:) No. 440. Daniel Webster, plaintiff in error, vs. Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company. N. Illinois C. C. U. S. Filed 10th November, 1874.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

DANIEL WEBSTER,
PL'FF IN ERROR,

vs.

CLARK W. UPTON, Assignee in Bankruptcy of the Great Western Insurance Company, a Bankrupt,
DEFT. IN ERROR.

ARGUMENT FOR PLAINTIFF IN ERROR.

E. VAN BUREN, Attorney.

Stillman & Benedict, Printers, 166 Washington Street.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

DANIEL WEBSTER,
PL'FF IN ERROR,

vs.

CLARK W. UPTON, Assignee in Bankruptcy of the Great Western Insurance Company, a Bankrupt,
DEFT. IN ERROR.

ARGUMENT FOR PLAINTIFF IN ERROR.

This is an action of assumpsit brought by Clark W. Upton, as assignee in Bankruptcy of the Great Western Insurance Company, against Daniel Webster, an assignee of stock bought by him of ——— Hale, a subscriber for stock in this Company for the unpaid balance on said stock. The charter of the Great Western Insurance Company was granted by the Legislature of the State of Illinois in 1857, and the present Company was organized under the charter in 1869. The charter makes no provision for the liability of stockholders.

On the 17th day of January, 1872, a petition in Bankruptcy was filed against the Company in the United States District Court for the Northen District of Illinois, on which petition, it was adjudicated a Bankrupt.

The defendant in error was appointed assignee.

On the 5th day of July 1872, an order was made by the District Court, which was as follows, to wit:

"ORDER FOR PAYMENT OF STOCK

In the Matter of the Great Western Ins. Co.,)
Bankrupt.) In Bankruptcy.

"And now on this day comes C. W. Upton, assignee of "the estate of said Bankrupt, and makes application to this court "showing that a large amount of capital stock of said Bankrupt "remains unpaid in part, that the whole amount of such cap- "ital stock will be required to be paid in order to meet the de- "mands now due from and proven against the estate of the "said Bankrupt, and upon investigation of the facts in the "matter, and the court being advised in the premises, it is or- "dered, that the entire amount unpaid of the capital stock of "said Bankrupt be paid to said assignee on or before the 15th "day of August, A. D. 1872, at his office in Chicago, Illinois, "and in default thereof that said assignee proceed to collect the "same. It is further ordered that notice of this call be given to "the stockholders of said Bankrupt, so far as known, without "unreasonable delay, by publication or otherwise."

There was *no assessment* made by the Company, and no personal service of notice of the order.

The action is predicated upon *this order*.

The plaintiff in error objected to the introduction of the order in evidence, and the Court overruled the objection and received the same in evidence.

The plaintiff in error was *not a subscriber for stock*, he gave no bond or note or other obligation to pay assessments or future calls, he made no promise to pay. The certificate which was issued by the Company to ——— Hale, and by him transferred to the plaintiff, is in the following words:

The

Great Western

Insurance Company.

"CAPITAL STOCK. (Number.) (Shares.)

"$500,000. Organized July 20, 1857,

"with liberty to increase to under Act of Legislature,

"$5,000,000. Approved Mch. 4, 1857.

THIS IS TO CERTIFY THAT———————————is "entitled to————————shares in the capital stock of the "*Great Western Insurance Co. of Chicago, Ills. of one hundred* "dollars each, of which twenty per cent. is payable as follows: "Five per cent. on receipt of stock certificate. Five per cent. "in three months from the date hereof. Five per cent. in six "months from date hereof. Five per cent. in nine months from "date. Transferable only in the books of the Company in person "or by Attorney on the surrender of this certificate being sub- "ject to the charter and By Laws of said Corporation and "Laws of the State of Illinois."

"Dated at Chicago, this day of [*Stamps.*] "in the year of our Lord one thousand eight hundred and "—— ——, Secretary. —— ——, President."

The stock was not assigned *subject* to assessment or calls, but the certificate says it is non-assessable. The plaintiff in error was a mere naked assignee, without assuming any liability by any agreement.

There is no provision in the charter relating to future as-

sessments. There is no Public Statute making assignees of stock liable for future assessments.

The District Court instructed the jury on the law of the case as follows:

"The only question is, was the defendant a stockholder of "the Company? If the testimony satisfies you that the defen- "dant purchased of the witness, ——— Hale, one hundred "shares of this stock, and that it was transferred on the books "of the Company, *either by Webster the defendant, or by Hale, "who sold the stock, or by the direction of either of them*, then "the defendant is liable the same as if he had subscribed for "the stock."

To this charge the plaintiff in error excepted.

The jury found a verdict for the defendant in error.

The plaintiff in error moved for a new trial, which the District Court overruled.

The plaintiff in error brought the case to the Circuit Court of the Northern District of Illinois by writ of error. Errors were duly assigned. The Circuit Court affirmed the judgment of the District Court, and rendered judgment against the plaintiff in error.

Circuit Court of the United States for the Northern District of Illinois.

DANIEL WEBSTER, Plaintiff in Error,
vs.
CLARK W. UPTON, Assignee in Bankruptcy of the Great Western Insurance Co., Defendant in Error. } Assignm't of Errors.

And now come the said plaintiff in and by E. and A. Van

Buren, his attorneys, and assigns the following errors in the record and proceedings aforesaid, to wit:

1st. The district court erred in in holding and deciding that an assignee of stock, or of a certificate of stock, in an Insurance Company was liable for future calls or assessments without an agreement or promise to pay.

2nd. The District court erred in holding and deciding in substance that the order of the Bankrupt Court, made July 5th, 1872, was equivalent to an assessment made by the Company upon the stock of the assignee. And that a suit could be maintained in assumpsit upon such order by the assignee in Bankruptcy, against the assignee of the stock.

3rd. Said District Court erred in admitting in evidence the order of said District Court (in Bankruptcy), against the objections of plaintiff in error.

4th. The court erred in instructing the jury as follows: "No question is made of the regularity of the organization of "the Great Western Insurance Company. The only question "is, was the defendant a stockholder of the Company? if the "testimony satisfies you that the defendant purchased of the "witness Hale, one hundred shares of this stock, and that it "was transferred in the books of the Company, either by "Webster, the defendant, or by ——— Hale, who sold the "stock, or by the direction of either of them, then the defend-"ant is liable the same as if he had subscribed for the stock."

5th. Said District Court erred in overruling the motion of plaintiff in error, for a new trial.

6th. The Circuit Court of the United States for the Northern district of Illinois, erred in affirming the judgment of

the district court of the United States for the Northern district of Illinois.

E. & A. VAN BUREN,
Att's for Pltfs. in Error.

ARGUMENT.

We claim that an assignee of stock is not liable for future assessments, in an action against him by the Company, or its assignee in Bankruptcy, merely on the ground of his being such assignee of the stock.

This action is based upon a promise express or implied.

It is not claimed that there is an *express* promise. The defendant did *not subscribe* for the stock, he gave no note, or bond, or other obligation to pay anything, he merely took an assignment of the stock. Now assuming that the defendant caused the certificate of stock to be transferred to him in the books, that act should not create any liability; the Company should have required him to become personally liable by giving his note or other obligations. It is not pretended that there was an *express promise* by the assignee, to pay future assessments; it was not assigned *subject to future assessments*, but on the coutrary it was assigned as *non-assessable*, nor were there *any provisions in the charter* relating to future assessments or calls *nor is there any public statute making* assignees of stock liable for future assessments; there are no facts upon which an implied promise could be based; there is no *privity* between

the parties; there is no *equity* on which to base an *implied promise.*

The defendant bought the certificate with twenty per cent. paid on it from a third person; it was worth that amount and no more, and that was all the interest he had in it; he made no contract with the Company; he did not buy it of it, and if it chose to let the assignee, or any one for him, have his name put on the stock ledger, and the stock transferred to him on the books of the Company, without taking from him any obligations to pay any future assessments, it was its own fault, and it must abide the consequences.

We think it very clear, that even a *subscriber for stock* is not liable for future assessments or calls unless there has been a promise to pay, or unless there is a provision in the charter, or some public statute making him liable.

Although it is not necessary for us to establish the fact that a *subscriber* for stock is not liable, yet we propose to do so, because if a subscriber for stock is not liable, it follows that an assignee is not liable; but though a subscriber may be liable, it by no means follows that an assignee is liable. We beg leave, therefore, to refer the court to a few authorities upon the first point.

In *Fort Edward and Fort Miller Plank Road Co. vs. Payne*, 17 Barbour, R. 567.

The defendant was a subscriber for stock, and the action was brought against him for *calls* made upon the capital stock. In an elaborate and exhaustive opinion the Supreme Court hold, that *unless the act of incorporation, or a public statute declares the subscriber for stock shall pay calls thereon, or unless he agrees to do so in the articles af association, or other legal in-*

strument, he is not personally liable. And the court say on page 577 and 578, "It has been said that an agreement *to take* "*is* "*ex vi termini*" *an agreement to pay for.* I do not so un- "derstand the meaning of the expression, nor see the force of "the argument, when used in reference to a subscription for "stock. In the case we have supposed, the agreement in "express terms is, that the party subscribes for the stock, and "if he does not pay for it, he will forfeit it; there is no ante- "cedent debt or duty, nor recognition, or creation of any at "the time. Without such debt or duty, or an express provis- "ion, *a mortgage creates no personal liability* (*Culver vs. Sisson*, "3 Comstock, N, Y. R., 204); as between themselves, their "obligations are reciprocal, and no one can be compelled to "proceed with the undertaking. It follows that as the Plank "road law imposes no personal obligations to pay for the "stock unless the defendant *has agreed to do so, the plaintiff* "*cannot recover.*"

Kennebeck & Portland Rail Road Company vs. Kendall, 31 Maine, R. 470, was an action of assumpsit against a *subscriber* for stock, to recover for assessments made on his stock. The paper signed by the defendant was as follows: "We agree to subscribe to the stock in the Kennebeck and Portland Rail Road Company, the number of shares at $100 each, set opposite our names, including our former subscription." The defendant signed it, and opposite his name was written "twelve." The *Corporation* had the power by the *Charter* to make *such by-laws* as should from time to time be deemed necessary for its management, and *also to make and collect assessments*, &c. The Company made a by-law authorizing the directors to make assessments upon the shares, and the

Treasurer, in case of delinquency by any stockholder in the payment thereof, to sell and transfer his shares, &c.

Also a by-law providing that "if the shares of any such "delinquent stockholder shall not sell for a sum sufficient to "pay his assessments with interest and charges of sale, he "shall *be held liable to the Corporation for any deficiency.*"

Assessments had been made, and the suit was brought to recover.

That case it seems to us, was much stronger than the case before the court, because, 1st, The defendant was a subscriber for stock, and 2nd, because the by-laws, by authority of its charter, authorized the directors to make the assessments upon defendant's stock, and a by-law was also made, that if defendant did not pay, he should be liable for any deficiency. Yet in that case the court held, that the defendant was not *personally liable.* And the court (pg. 474) say, "a "corporation may in an action at law, recover the amount "due for its shares or for assessments legally made upon them, "when by *its charter or other statute provision, a personal "obligation is imposed upon the holder to pay for them.* And "when the holder has made an *express agreement to pay for "them*, without proof of an agreement, or personal obligation, "the corporation cannot recover."

The above is a well considered case, and the court refer to a large number of cases, and also refer to the cases in Conn. relied upon by the defendant in error. Again (p. 476) the court say, "The subscription made by the defendant on October 28, "1846, contains no promise or agreement to pay for the shares. "It is at most but an agreement by which he became the "owner of nineteen shares of stock subject to payment to be "made for them." The same doctrine is fully established

in *Seymour vs. Sturges*, 26 N.Y., R. 134. *Palmer vs. Ridge Mining Company*, 34 Penn. State R. 288, to which we shall hereafter refer.

This, it seems to us, is the true rule. Now what are the facts in this case? All the agreement that was made or obligation to pay, if any, was contained in the certificate that merely says, that the holder has ——— shares of stock of $100 each, of which per cent. is payable as follows: 5 per cent. on receipt of certificate, 5 in 3, 6 and 9 months, subject to the charter and by-laws. The 20 per cent. has been paid, the charter and by-laws are silent upon the subject of payment. There is certainly no promise to pay, and instead of furnishing grounds for implying a promise to pay, we submit that it repels the idea of any intention to pay anything more than the 20 per cent., for the certificate expressly says it is *non*-assessable, and the only inference is, that the holder took the certificate with the understanding, that if he did not choose to pay anything more, the most he could lose would be his stock by forfeiture, and the company having received 20 per cent., were willing to issue the certificate, holding that as a pledge for future payment, with the privilege of forfeiting the stock for non-payment.

The cases in Conn. relied upon by the defendant in error differ materially from the one before the court. The case in 12 Conn., 499, was an action against the *subscriber* for stock. The certificate was as follows: "Be it known that Leonard "Kennedy, Jr., of Hartford, is entitled to ten shares of the "capital stock of the Hartford and New Haven Railroad "Company, on which Five dollars on each share has been "paid. The residue *payable by installments as may be ordered* "by the Board of Directors, &c." The directors made assess-

ments, and the action was brought to recover them. It was claimed by plaintiff that "the terms of the subscription *im-* "*posed an express engagement on the part of the subscriber to* "*pay the sums subscribed when required by the directors.*"

The Court held the defendant liable, and based its decisions upon the terms of the act of incorporation. They say (p. 512): "Hence the peculiar fitness of the expression, "*the Directors* "*may require the payment* of the sum or sums subscribed to "the capital stock, and a failure or neglect to make payment "pursuant to the requisition of the board of directors, the stock "of delinquent stockholders, or so much thereof as may be "necessary, may be sold, after due lapse of six months from "the time the payment becomes due, and the surplus, the avails "of such sale, after deducting the payments due, and interest "thereon, and the necessary expenses of sale, shall be paid "over by such negligent stockholder. This *section of the charter* "*which by reference is made part of the subscription of the de-* "*fendant, points very distinctly to a personal liability on the part* "*of the stockholder*, the directors may require payment," * *

There is no such provision in the charter in the case before the Court, and no statute in relation to it. We submit, therefore, that the above case differs materially from the case before the Court, and is by no means an authority against our positious.

The case of *Ward vs. Griswold Manufacturing Company*, 16 Conn., 593, was a bill in chancery filed against the corporation by creditors, praying that a decree might be made ordering the defendants to pay an instalment into the hands of a receiver to pay the plaintiff and such other creditors as should come in under the decree.

The Court upon the case cited in 12 Conn., and upon the provisions of the act of incorporation, decreed in favor of plaintiff. The Court say, p. 597, say: "The Resolve incorporating "the Griswold Manufacturing Company, provides that the cap- "ital stock of the corporation shall not exceed Fifty Thousand "dollars, that a share of the stock shall be one hundred dollars, "and that the *directors may call in the subscriptions to the capi- "tal stock by instalments in such proportion and at such times "and places as they may think proper*, giving such notice there- "of as the by-laws and rules of the Company shall prescribe." There was a further provision in the charter, that the affairs of the Company should be managed by directors, and that they should have power to make and establish by-laws, &c.

That case also, we submit, is materially different from the case before the Court, in this: That there was a provision in the charter making them liable; in ours there is none.

The case of *Mann vs. Cook*, in 20 Conn., 177, was a Bill in Chancery by Mann, the Receiver of the Canajoharie & Catskill Railroad Company against the Executrix of Cook, deceased, a subscriber for stock. In that case, also, the paper on which he subscribed contained a clause that he should pay on the first day of May next, Twelve and 50-100 Dollars on each share, when said shares are "to be transferred to each sub- "scriber to this instrument, but on *condition that all the future "calls legally made by said board of directors, shall be paid as "required*, or said shares shall become the property of the Com- "pany, and the President and Directors shall *sell the same* for "the benefit of the Company."

The Court held that the plaintiff could recover, and say: "That all subscribers to the capital stock of a corporation, "which by its *charter may require or demand payment of the*

"*capital subscribed, have incurred a debt* which may be enforced "by any appropriate common law or equitable remedy." (pg. 186.)

This case, like the others to which I have referred, is very different from the case now before the Court. They are all based upon some provision in the charter making the subscriber liable. There is no such provision in the charter in this case. Yet these are the cases relied upon by the defendant in error. We submit that these cases do not overturn the cases we have cited in Maine, New York and Pennsylvania, and much less do they establish the fact that in the case before the Court, the plaintiff is entitled to recover. They have not held, nor can any case be found where the Court has held, that a subscriber for stock, without any agreement to pay, or any statute or provision in the charter making him liable, can be compelled to pay future assessments.

The Company in the case before the Court never intended to make the subscriber liable. The subscribers never intended to become liable, and it seems to us there is not a shadow on which an implied promise can be based.

If then, the subscriber for stock in such a case as this, cannot be made liable for future calls, then of course an assignee cannot be liable. But assume that, in this case, the subscriber is liable, it by no means follows that the assignee is liable.

I shall now endeavor to show that the plaintiff in error in this case, who is a naked assignee of stock is not liable, even if the subscriber is.

If the subscriber was liable to the Company, his assignment of his stock to the plaintiff in error does not release him.

In *Schenectady Plank Road Co. vs. Thatcher*, 11 N. Y. R.,

on page 108, the Court say: "Nor was it any defense that the "defendant had sold his stock to Boyd. *That did not release him "from his express promise to pay the plaintiff.*"

Upon what principle can it be claimed that the plaintiff in error is liable? It is not claimed that he made any promise or engagement of any kind to any one, he merely took the certificate for what it was worth. He might pay future calls or forfeit his stock, as he should choose. The charter did not make him liable. The certificate did not make him liable. There was no *agreement of any kind to create any personal liability.* He did not intend to incur any personal liability, and he did not suppose he was making himself liable, and the Company did not intend that any holder of a certificate should be liable. Assuming that he had his name put on the stock books, we cannot conceive how that created any liability. No Court has ever gone so far as to say, that a mere stockholder was liable for assessments, much less an assignee of stock.

Again, upon what principle of law can the plaintiff maintain his action? There is no privity between the plaintiff in error and the Company. He did not buy of it, and had no transaction with it.

Suppose A makes a contract with B, by which he agrees to buy of B certain real estate, and pay him in instalments. A sells his interest in the contract to C; can B sue C to recover a personal judgment on the instalments?

An action of debt will not lie upon a chattel mortgage, to recover the sum of money secured thereby, unless the instrument contains an *express agreement to pay the same, or a distinct acknowledgement of an existing debt.*" 3 Comstock, N.Y. 264.

If A sells real estate to B, subject to an incumbrance, B

is not personally liable to pay that incumbrance unless he agrees to pay it, but is liable to lose his land if he does not pay.

But we are not without authority upon this point.

In two cases of *Palmer vs. the Ridge Mining Company*, 34 Penn. State Reports, 288. The Court held that an assignee of stock of an incorporated Company, subject to the payment of future calls *is not personally liable for unpaid balances, in the absence of any such provision in the act of incorporation.*

In that case, Palmer, became *the owner of certain stock from other parties*, and subsequently to his becoming the owner of these shares, assessments were called for by the Company of which he was notified.

The Court say: "The case of *Long vs. Penn Insnrance* "*Company*, 6 Barr, 421, has no bearing on this question; the "question there was, whether the defendant was really a "stockholder, having purchased stock as a trustee, and not one "about the liability of stockholders to an action for unpaid "calls, for the act of incorporation in that case (P. L. 1841 "page 416,) expressly made, "any subscriber a stockholder," so liable. The case which rules these, is:

"*Canal Company vs. Sansom*, 1 Binn 70, and that is direct, "whether the purchase was made expressly subject to unpaid "calls or not, and the decision has been almost universally ad- "mitted as sound. In both these cases, the purchase is ex- "pressly so subject, and though this fact is diversly expressed, "it is substantially the same. In the case just cited, as also "here, the act of incorporation contained such a condition. "The law there and the transfer here as well as the law, "made the stock subject to future calls, and both forms are "equivalent. As between the parties making and receiving the

"transfer, there might possibly be a contract to pay the calls. "*but there is none with the Company, unless the act of incorpor-* "*ation requires it.*"

"The case of the *Rail Road Company vs. Boorman* 12 "Conn. R. 530, 2nd Am. Railway cases, 28. in connection with "the immediately proceeding and kindred case, exhibits great "judicial ability, but we cannot apply it here without a *petitio* "*principii.* Logically, we can obtain no definite results from "undefined promises. There is here the relation of Company "and shareholders, bnt before we can say that the contract al- "leged is involved in this relation, we must know the terms "or definitions of the relation. It is true that, if we find a re- "lation actually existing, and do not find any actual definition "of it, by special law or contract, we must assume that it has "a definition according to the customary character of such "relations, and thus we imply its terms. But where the defi- "nition is expressed by the parties, or by the act of incorpor- "ation there is no place for implication.

"It is essential to a shareholder's contract, that it should "be definate in amount and proportion, but it is not essential "that he should be personally liable for unpaid instalments, "as numerous cases show. The instalment paid may be re- "garded as a sufficient pledge for those that remain unpaid. We "must therefore look to the act of incorporation and to the "contract which it authorizes for the definition of a shareholder, "and for the liabilities which he assumes as such. *In the cases* "*before us, he undertakes no farther than that his stock may be* "*forfeited if he neglect to pay up instalments called for, and no* "*action lies for them.* These judgments ought therefore, to have "been entered in favor of the defendant.

In *Seymore vs. Sturges*, 26 N. Y. R. 134. The complainant, a creditor of a foreign corporation filed a bill in chancery, under a statute of that State in relation to suits against foreign corporations, against a purchaser of stock to compel him to pay the balance remaining unpaid upon his stock. The question in that case was, as to the liability of the defendant, as purchaser of stock from the corporation. The corporation in pursuance of the power given by the charter, enacted by laws, one of which was, to the effect that the directors should have power to make calls for payment upon the stock of the Company from time to time not exceeding the par value of the same as fixed by the charter, &c. Some of the atock had in some way come to be owned by the corporation, and it sold it to the defendant "*subject to a further payment of thirty five dollars per share*," and the *certificates were issued in that form*. The question was, as to the personal liability of the defendant, and it was claimed that the defendant took the stock *Cum Onore*, and became personally bound to pay it. The Court held, that the doctrine of *Cum Onore* did not apply, and that there was no implied promise to pay, and say, "without a promise proved in one way "or the other, a party cannot be charged in assumptit." That is, there must be an express or implied promise to pay." * *

Again the Court say, (pg. 143) in speaking of the liability of the purchasers for stock: "It was not an agreement by "Mrs S. to pay forty-six dollars, or thirty-nine dollars for the "stock, eleven dollars or four dollars in hand and thirty five "dollars on call or at a future time; but it was a purchase of the "stock at eleven and five dollars, subject to a lien for thirty five "dollars additional. *The very terms of the sale negative all inference of a promise by the purchaser to pay the additional sum.*

This reasoning of the Court applies directly to this case. This certificate merely states how the 20 per cent. is to be paid and then says, "it is subject to the By-laws of said corporation "and laws of the State of Illinois." It does not even state that it is *subject* to any unpaid balance, but says it is *non-assessable.* There is no provision in the charter in relation to it, and there are no By-laws, nor any law of the State of Illinois upon the subject whatever. There is therefore nothing upon which to base an implied promise, and an express one is not even claimed to have been made, and the Court in that case, after referring to all the cases relied upon by the defendant in error, including the cases in 12, Conn. 499 and 530, 16 Conn., 593, and 20 Conn., 177, 3 Sandford Chan. 466, among a large number of others, hold that the assignee of the stock is not personally liable, and conclude as follows: (on pg. 146) "There was no express promise by the defendant Sturges, or "by any one to whose rights and liabilities he has succeeded, "to take and pay for the stock, and no implied contract or "promise is made out by the evidence, on the contrary every "circumstance shows, that no such promise was made or in- "tended to be made, or understood to have been made; and it "follows, that there is no personal agreement which can be "enforced by the corporation, or in behalf of it, for the benefit "of a creditor of the corporation."

The only case I think that can be found, which seems to favor the position of the defendants in error, is, "The Hartford & New Haven Railroad Company against Boorman, and another, 12 Conn., pg. 529," and immediately follows the case of "Hartford & New Haven Railroad Company vs. Kennedy, in 12 Conn., 499," already referred to. That case was different from the case now before the Court. In that case like this, the

defendant was an assignee of stock, but the stock had been duly transferred to the assignee upon the books of the Company, *and a certificate given at the request of the defendants*; to their declaring that "they are entitled to one hundred shares in "the capital stock of the Hartford & New Haven Railroad Co. "on which five dollars on each share has been paid, *the residue* "*payable by instalments as may be ordered by the Board of Di-* "*rectors.*". The Court make no distinction between that case and the one just before decided, but held that an assignee of stock stands in the same relation as an original subscriber, and in the previous case decided by the Court, there was a formal snbscription to take and pay for the stock on the terms and conditions and limitations mentioned in the charter. We have already referred to that case, and have referred the Court to the cases in Maine, Pennsylvania and New York, in which the Connecticut cases are reviewed.

The question as the liability of an assignee is not argued, nor raised by the court, and is a mere indorsement of their previous decision in the case of same plaintiff against Kendedy. We submit, therefore, that the reasoning of the court in 34 Penn. State Reports, and in 26 N.Y., is much more satisfactory upon the question, and we also submit that the decision in 12 Conn. 529 cannot be sustained upon principle for the reasons we have already given.

It may be claimed by the defendant in error that the plaintiff in error took the stock *cum onore*, and is therefore liable.

We understand *cum onore* to mean a lien upon the property —as a pledge—or being by attachment a legal lien—something that can take the property. Bouvier defines it to be "with the burden;" subject to the incumbrance; subject to the charge; a purchase with knowledge of an incumbrance takes the property *cum onore.*

Now in this case, there was no lien or incumbrance on the stock; no assessment had been made, no burden was upon it; it was bought by plaintiff in error as full paid up stock—non-assessable; even if there had been an incumbrance upon it, unless the plaintiff had purchased with knoweldge of the incumbrance, actual or constructive, he would, as an innocent purchaser, hold the property as against the incumbrance; and if he had purchased subject to an incumbrance, he would not be personally liable to pay the incumbrance unless he agreed to pay it. In the case in 26 N. Y. (page 141), the court held that in a case like the one now before the court, *cum orone* did not apply.

II.

We claim that the District Court erred in deciding, as it virtually did, that the defendant in error could recover on the order of July 5th, 1872.

1. There was no assessment made by the Company, and the Bankrupt Court assumed to do not only what the Company had not done, but what the Company could not do.

The corporation was limited in its powers by its charter, and that gave it no power to make assessments. The Court could do no more than the Company could do. Courts can interpret and enforce contracts between parties, but cannot make contracts for them.

2. The order was void as to the stockholders, because they had no notice that such an order would be applied for; they did not appear, and the Court acquired no jurisdiction of the person.

3. Even after the order was made, no notice was given to the plaintiff in error, as the order in express terms required; the giving of that notice was a condition precedent to its taking effect, and to the collecting of the monies under the order.

III.

We claim that the district court erred in admitting in evidence the order of said district court (in Bankruptcy) against the objections of plaintiff.

1. Because the order was void for the reason stated in our second point; and, 2d, Because the order was not and could not be in the nature of a judgment, and therefore was not competent evidence to go to the jury.

IV.

The court erred in instructing the jury as follows. "No "question is made of the regularity of the organization of the "Great Western Insurance Company. The only question is, "was the defendant a stock-holder of the Company? If the "testimony satisfies you that the defendant purchased of the "witness ——— Hale, one hundred shares of this stock, and "that it was transfered in the books of the Company, *either by* "*Webster, the defendant, or by ——— Hale, who sold the stock,* "*or by the direction of either of them, then the defendant is liable* "*the same as if he had subscribed for stock.*"

It was contended by Webster, in the trial, that he never directed, consented to, or knew of his name being put in the

stock books. Now if it is essential that the stock should be transferred to Webster on the Company's books, then the above instruction was erroneous, because the court tells the jury in substance that if Hale, who sold the stock to Webster, after he had sold it, transferred it, or caused it to be transferred on the Company's books, then Webster was liable. We submit that this is not good Law:

1. Because the transferring the stock in the books did not make him liable.

2. Because Hale after he had parted with his stock, could not do any act to affect the rights or liability of Webster.

The instruction was also wrong, because it did not submit to the jury the question, as to whether Webster had made any promise to pay assessments, either *express* or *implied*, but told them if he was a stockholder, and a *stranger* made a transfer on the books, then Webster was liable.

V.

We submit that the District Court erred in overruling the motion of Plaintiff in error for a new trial for the reasons herein before stated.

VI.

If we are right in any of our positions, then the Circuit Court erred in affirming the judgment.

E. VAN BUREN,

Attorney for Pltf. in Error.

Supreme Court of the United States.

DANIEL WEBSTER, *Plaintiff in Error,*
vs.
CLARK W. UPTON, ASSIGNEE OF THE GREAT WESTERN INSURANCE COMPANY, A BANKRUPT, *Defendant in Error.*

In Error to the Circuit Court of the United States for the Northern District of Illinois.

Brief for Defendant in Error.

L. H. BOUTELL,
Of Counsel.

CHICAGO:
JAMESON & MORSE, PRINTERS, 162 & 164 CLARK STREET.
1875.

SUPREME COURT OF THE UNITED STATES.

DANIEL WEBSTER,
Plaintiff in Error,

v.

CLARK W. UPTON, ASSIGNEE OF THE GREAT WESTERN INSURANCE COMPANY, A BANKRUPT,
Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR DEFENDANT IN ERROR,

STATEMENT.

This is an action of assumpsit brought by Clark W. Upton, as assignee in bankruptcy of the Great Western Insurance Company, against Daniel Webster, as a stockholder in said company, for the balance unpaid on his stock.

The charter of this company, dated February 4th, 1857, fixed its capital stock at $100,000. Under the general insurance law of Illinois of March 11th, 1869, the company obtained the right on June 25th, 1870, to increase its capital stock to $5,000,000. Under this amended charter, it carried on a fire insurance business in Chicago Illinois, till the great fire of October 8th and 9th, 1871. The losses sustained by reason of that fire rendered the company insolvent, but it undertook to continue its business till January 17th, 1872, when a petition in bankruptcy was filed against it in the United States District Court, for the Northern District of Illinois,

on which petition it was adjudicated a bankrupt, February 6th, 1872. On the 11th day of April, 1872, said Upton was appointed the assignee in bankruptcy of said company.

Claims to the amount of about $800,000 were proved against the estate of said company. The assets of the company consisted for the most part of unpaid balances on its capital stock, which in most cases were eighty per cent. On the 5th day of July, 1872, on the representation of the assignee, the Bankruptcy Court made an order that the amount unpaid on said capital stock should be paid to the assignee on or before August 15th, 1872, and in default thereof, that the assignee proceed to collect the same, and that notice of said order be given to the stockholders by publication or otherwise Notice of this order was accordingly given to the stockholders by publication and by mailing to each stockholder a copy of the order with a demand for payment.

Said Webster having failed to pay the amount due on his stock, after such demand, in accordance with the terms of said order, this suit was commenced in said District Court. Said Webster filed the plea of general issue, and on the trial the jury found for the assignee. The case was removed by said Webster by writ of error to the Circuit Court of the United States for said district, where the judgment of the court below was affirmed. Whereupon it was removed by writ of error to this court.

This case is in all its features like the case of *Carver* vs. *Upton*, decided at the present term, except that Webster, instead of being a subscriber for the stock of said company, purchased and took an assignment of one hundred shares thereof from one Morton F. Hale, the subscriber for said stock, and to whom the same was originally issued.

It appears from the Record, page 46, that on the trial of the case in the District Court,—

"Evidence was given tending to show that one Hale was the owner of a large amount of stock of said company, for which he held the company's certificates; that he had through his broker

sold one hundred shares to this defendant, on which twenty per cent. had been paid; also evidence tending to show that the defendant's name was on the stock ledger; and also evidence tending to show that the defendant transferred or caused said stock to be transferred to him on the books of the company."

The charge of the judge on the trial in the District Court was as follows:

"*Gentlemen of the Jury*: No question is made of the regularity of the organization of the Great Western Insurance Company. The only question is, was the defendant a stockholder of said company? If the testimony satisfies you that the defendant purchased of the witness, Hale, one hundred shares of the stock, and that it was transferred on the books of the company either by Webster, the defendant, or by Hale, who sold the stock, or by the direction of either of them, then the defendant is liable the same as if he had subscribed for the stock. Now, Webster swears that he received the certificate from Hale or his broker in blank; that he put it in his safe, where it remained until the great fire of 1871; that he never had it transferred on the company's books. On the other hand you have the testimony of several witnesses that they saw the name of Daniel Webster on the stock book. Now, gentlemen, who put it there? It must have been put there by some one who knew the fact of such stock being owned by Webster, and then you will recollect that Loomis, the broker who sold the stock for Hale, to Webster, testified that he heard Webster say that he had it transferred, as he wanted it in his own name. It is true that Webster testified that he did not have it transferred on the books, but it is proper that I should remind you that Webster is the defendant, and is an interested witness, while the other witnesses, are disinterested; you may believe Webster, however. Unless the stock was transferred on the company's books by either Webster or Hale, or by their direction, or the direction of one of them, the plaintiff cannot recover; because he did not become a stockholder, he could not receive dividends, and there was no privity between

him and the company. If you find for the plaintiff you will assess the damages at eighty per cent. on the one hundred shares, with interest; if you find for the defendant, you will simply say so."

The only questions raised by the Assignment of Errors, which it now becomes necessary to consider, are

First. Is an assignee of stock liable for the balance unpaid upon it?

Second. Was the charge of the District Judge erroneous?

POINTS.

I.

An assignee of stock is liable for unpaid balances thereon to the same extent as the original holder.

1. This court having decided in the case of *Carver* vs. *Upton*, that the original holders of the stock are liable for the unpaid balances thereon, the question arises as to the liability of the assignees of the stock. That an assignee of stock is subrogated to the liabilities as well as the rights of the original holder thereof is settled beyond controversy.

Hartford & N. H. R. R. Co. vs. *Boorman*, 12 Conn., 530.
Angell & Ames on Corporations, § 534.
1 Redfield on Railways, § 42, note 3.

2. As between the buyer and seller, the transaction is completed by an assignment of the certificate of stock. To establish a privity between the buyer and the company, there must be a transfer on the books of the company. But when this transfer is made on the books of the company, the change of ownership is complete for all purposes; and the transferee becomes clothed

with the rights and the liabilities of the original holder, even though a new certificate may not be issued to the transferee.

1 Redfield on Railways, § 32, Sec. 3, note 2.
Cheltenham Railway Co. vs. *Daniel*, 2 A. & E. (N. S.), 281.

3. Transfers of stock may be in blank.

1 Redfield on Railways, § 35, and note 2.
Angell & Ames on Corporations, § 564, and note 2 (a).
Starr vs. *Hackett*, 12 Gray, 227.
Kortwright vs. *Buffalo Com. Bank*, 20 Wend., 91.
White vs. *Vt. & Mass. R. R. Co.*, 21 How., 575.
Sheffield R. W. Co. vs. *Woodcock*, 7 M. & W., 574.

II.

The charge of the District Judge was not erroneous.

1. The District Judge instructed the jury that if they believed that Webster purchased the stock of Hale, and that either Webster or Hale directed it to be transferred on the books of the company, then Webster would be liable the same as if he had subscribed for the stock. (Record page 48.)

It is clear from the record, (pages 46 and 48,) that the evidence must have satisfied the jury that the transfer was made by the direction of Webster. So that in no view of the case could Webster have been prejudiced by the instruction of the court.

2. But as matter of law, it was competent for Hale to make the transfer, after the sale, and so to make Webster responsible for future calls, for the following reasons:

First.—An assignee of stock is substituted not only to the rights, but to the obligations of the original subscriber. I have already cited authorities in support of this point.

Second.—A buyer of stock is liable at law to the seller for calls paid by seller after the transfer.

Angell & Ames on Corporations, § 557, and note b.

1 Redfield on Railways, § 34, see 2, note 2.

Third.—A Court of Equity will compel the transferee of stock to record the transfer, and to pay all calls since the transfer.

Wynne vs. *Price*, 3 De Grex & Smale, 310.

If then, it is the duty of a purchaser of stock to have the transfer recorded on the books of the company, in order to save the seller from further liability thereon; and if a Court of Equity will compel the buyer to perform this duty; it is clear that the seller may properly request the company to record the transfer, and upon such record being made, the buyer becomes responsible to the company and its creditors as a stockholder.

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